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## **A “Neo-Abolitionist Trend” in Sub-Saharan Africa? Regional Anti-Trafficking Patterns and a Preliminary Legislative Taxonomy**

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Benjamin N. Lawrance and Ruby P Andrew

### INTRODUCTION

In the decade since the US Department of State (USDOS) instituted the production of its annual Trafficking in Persons (TIP) Report, anti-trafficking measures have been passed across the globe, and the US role in setting standards and paradigms for anti-trafficking has been extensively analyzed and criticized.<sup>1</sup> Through its Office to Monitor and Combat Trafficking in Persons (OMCTP), the USDOS’ three-tier categorization of nations’ trafficking measures continues to play a pivotal role in shaming recalcitrant nations into responding to accusations of trafficking within and across their respective borders.<sup>2</sup>

No region has experienced so dramatic a transformation with respect to the USDOS agenda of “prevention, protection, and prosecution” than sub-Saharan Africa.<sup>3</sup> No sub-Saharan African nation had an anti-trafficking statute at the start of the millennium. Over the course of the decade, the USDOS annually updated data on legislative responses and upbraided individual nations. By 2010, the supermajority of African nations had enacted new legislation to respond to the growing concern with trafficking in persons.<sup>4</sup> Yet comparatively little research has examined the *regional* dimensions of this new legislative experiment and the shape it is taking. Although some reports present data regionally—what we shall later describe as part of a “horizontal” framework—scant research has attempted to assess the effectiveness of anti-trafficking legislation in developing nations on a regional basis.<sup>5</sup> More commonly, data is presented nation-by-nation, and analysis is generally restricted to the domestic context.<sup>6</sup>

While it is possible to demonstrate a relationship between a perceived increase in trafficking in sub-Saharan Africa and subsequent regional legislative responses, establishing causality between USDOS TIP directives and new laws is more complex. No language in the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) and its subsequent reauthorizations addresses regional variations. To the contrary, the 2003 reauthorization reframed data collection efforts to showcase “global,” rather than regional, trends.<sup>7</sup> There are those who insist the transformative vision embedded in new legislation is anchored by one or several domestic or international diplomatic agendas.<sup>8</sup> Our interests here, however, reside less in identifying the policy mechanics and ideological progenitors of laws, and more in predicting the effectiveness and stability of the legislative paradigm as a remedy, as part of the wider debate on the nature of slavery and abolition in Africa. The precise origins of the evolving taxonomy we describe below remain a matter of significant debate. Thus, in order to predict the relative success of the implementation of the region’s new laws, we propose to contextualize them by situating them among earlier abolitionist activities affecting sub-Saharan Africa.

For over two centuries antislavery efforts (i.e., outlawing the legal slave trade) and anti-trafficking strategies (i.e., combating illegal slave trading) have been developed in and outside of Africa through the use of legislative mechanisms. Scholars, however, can point to numerous examples of African states where multiple laws over many decades have failed to extinguish slavery and slavery-related practices. Focusing on specific nations (Mauritania, for example) only further underscores this apparent contradiction. On the one hand, the sequential nature of legislative remedy reveals how ineffective legislation may be subjected to revision and reform. On the other hand, practitioners of slavery and slavery-like practices seem able to circumvent each successive legislative remedy. This ability to circumvent new laws highlights slavery practitioners’ “reinventive”

capacity—insofar as systems of labor coercion morph into new systems of exploitation to evade regulation and prohibition.<sup>9</sup>

We see the centrality of colonial and national boundaries and jurisdictions to studies of abolitionist activity, insofar as evidence and analysis is compiled nationally and presented chronologically, as an obstructive factor in predicting legislative efficacy.<sup>10</sup> We describe this method of presentation and analysis as a “vertical” approach. Vertical studies ignore the “horizontal,” i.e. regional or continental-wide, processes associated with legislative remedies as they fan out across space and time. One solution is to recast the dimensions of study, and to examine legislative programs regionally and transnationally. We contend that what appears to be a new regional trend is more accurately interpreted as only the most recent iteration of a long-standing tradition of broad-based action that we identify as a “legislative trend.”<sup>11</sup>

While our goal is to examine the broad contours of legislative action, and such contours are more easily identifiable after considerable time has elapsed since the enactment of laws, we acknowledge that each individual law is produced discretely and domestically. Furthermore, a focus on broad contours also allows us to distinguish between domestic legal products from bilateral, multilateral, and regional treaties and conventions, and memoranda pertaining to anti-trafficking. The laws that interest us are *national* products, and we have not found evidence that individual nations are collaborating on specific domestic legislative apparatuses. Moreover, as our preliminary taxonomy demonstrates, there is considerable disagreement among African nations with respect to how to respond to the *perceived* increased in trafficking.<sup>12</sup>

We are writing with a set of underlying assumptions and/or observations that we will detail here to provide the context necessary to understand our argument. First, a substantial corpus of antislavery/anti-trafficking legislation exists, from which we identify several distinct historical trends. Second, we observe that previous abolitionist activities struggled with

defining slave systems and slave trades, much as many contemporary efforts have struggled to define trafficking. Third, antislavery and anti-trafficking laws in sub-Saharan Africa from the precolonial period all the way into the postcolonial period created multiple categories of victims and perpetrators. Fourth, laws, treaties, and conventions—the antecedents of the contemporary neo-abolitionist agenda—created separate categories for adults and children and also distinguished between men and women.<sup>13</sup> Fifth, subsequent antislavery and anti-trafficking laws attempted to plug the gaps in colonial and postcolonial legislative apparatuses and curtail the “reinventive” capacity of systems of labor coercion.

We identify six general characteristics of a legislative trend and based on our identification of these characteristics, we hypothesize that sub-Saharan Africa is currently in the grip of what we term a neo-abolitionist trend. We argue that previous trends of antislavery and anti-trafficking legislation enacted over and implemented in sub-Saharan Africa provide important guidance in predicting the future with respect to regional anti-trafficking initiatives and the future of the contemporary neo-abolitionist agenda. Moreover, the resistance of certain sub-Saharan African nations (such as Niger and Botswana) to pass, implement, and enforce new legislation speaks to the long history of resistance by Africans to legal change emanating from abroad.<sup>14</sup>

In the context of this discussion, we offer a description and interpretation of the emerging trends in sub-Saharan African anti-trafficking legislation. We examine the forms and content of the laws using examples from a broad spectrum of countries, and we propose a preliminary taxonomy based on the countries’ deployment of international models for the criminalization of trafficking in persons. We argue that three forms of legislative response to trafficking appear to be underway in sub-Saharan Africa: the first is a broad or “blanket” human trafficking model; the second consists of a “child-centric” legislative model; and the third model comprises countries which enhance or “revalidate” existing domestic legislation and criminal codes.

The first group comprises states deploying laws on human trafficking interpreted in the broadest sense, which generically appear to meet evolving international minimum standards. The second group comprises states where laws prohibit only trafficking of minors, although the laws may accompany differing prohibitions depending on the relationship between trafficker and trafficked. The third group comprises states that appear to be resisting the current vogue for new law. They respond in a variety of ways, including amending criminal codes and labor laws, with the inference that current domestic legislative apparatuses provide sufficient protections for victims and scope for the prosecution of perpetrators.<sup>15</sup>

In summary, Part One of this article provides a synopsis of the traditional “vertical” narrative of slavery and abolition in Mauritania to demonstrate how the “horizontal” approach we propose (i.e., a transnational and regional perspective) is more valuable than the vertical approach. In Part Two, we identify what we call the “abolitionist legislative trend.” We use this section to explain that we identified this trend by exploring antecedent legislative trends of antislavery and anti-trafficking legislation as it pertains to sub-Saharan Africa. We also explain the defining characteristics of individual trends. Part Three summarizes the general characteristics of the legislative trend and then describes the contours of the current “neo-abolitionist” trend. We then examine the forms of contemporary anti-trafficking legislation unfolding in sub-Saharan Africa and outline a new taxonomy of state-based responses by focusing on domestic legislative outcomes. Based on the antecedent legislative trends and on the contemporary “neo-abolitionist legislative trend,” Part Four includes a series of predictions about anti-trafficking in sub-Saharan Africa, and a proposal for a test hypothesis. Part Five offers some suggestions for more effective solutions to the problems presented in this article.

## I. A “VERTICAL” PERSPECTIVE ON SLAVERY AND ABOLITION

Mauritania is often highlighted in press reports as a country with a deep and ingrained history of slavery and slave trading.<sup>16</sup> The apparent attachment to slavery and slave-like institutions of the inhabitants of the country known today as the Islamic Republic of Mauritania is something of a conundrum to international humanitarians and national legislators alike.<sup>17</sup> Explanations of the seemingly stubborn resilience of Mauritanian slavery range from the ethnocentric and racialized<sup>18</sup> prejudice,<sup>19</sup> using proprietary,<sup>20</sup> class or caste<sup>21</sup> based justifications<sup>22</sup> on one end of the spectrum, to a crude form of environmental determinism on the other end.<sup>23</sup> Accompanying these differing explanations are legal remedies in the form of various abolition measures that have been contradictorily interpreted as being simultaneously ineffective while at the same time contributing to the decline of slavery.<sup>24</sup>

We propose to examine Mauritania’s history of slavery and abolition to demonstrate the peril of a “vertical” analytical framework bound by national concerns. Mauritania’s experience demonstrates that while many of the antislavery and anti-trafficking initiatives are domestic in origin and form, the practices they purport to combat are better understood as transnational and regional. A brief examination of Mauritania’s experience with abolition highlights the problems encountered by site-specific “vertical” narratives of slavery, trafficking and anti-trafficking. On the one hand, given that slavery in Mauritania has been banned on at least five, possibly more, occasions, with different legal pronouncements over a period of at least ninety years, the resilience of the institution is clearly apparent. On the other hand, Mauritanian slavery is frequently depicted as “dying” and/or in decline, the implication being that the tightening and enforcement of legal prohibitions will ultimately prove effective.<sup>25</sup> Which is it? Is Mauritanian slavery so “secret” an institution that it will forever evade extermination?<sup>26</sup> Or is slavery “slowly” dying and just needs further encouragement?

*A. The Case of Mauritania: Why a Vertical Approach is Analytically Deficient*

The history of abolition in Mauritania is instructive of perils of the vertical approach to analyzing trafficking and anti-trafficking. From the earliest records, the experience of enslavement and trafficking in the region challenges the site-specific narrative of slavery and abolition. By some calculations, between eleven and eighteen million individuals exited Africa across the Sahara Desert and the Red Sea from the year 650 to 1900.<sup>27</sup>

For millennia, the region that is today Mauritania was a hinterland source for slaves transported north across the Sahara into the Mediterranean region. Africans, residing in what is now Mauritania, were traded north in to the Phoenician and Roman Empires and its successors. Slavery played a prominent role first in Islamicization and subsequently in Islamic society, prior to European expansion. Until the mid-nineteenth century, it was also a site for transportation west across the Atlantic Ocean. Slavery and slave trading continued to evolve as French imperial control waxed and waned. While coastal slave markets experienced a “slow death,” interior markets remained active well into the twentieth century.

**1. Pre-Colonial Slave Trading to the Nineteenth Century**

Slavery and slave trading featured prominently in the processes of Islamicization, which extended south from Mediterranean North Africa from the ninth century over the Sahara and along the coast. Slavery was central to the Saharan economy and the emergence of Islamic states in what is now Mauritania and to its immediate neighbors. Because these trading routes were so valuable, the Moroccan Sultan, Moulay Ismail (1672–1727), raised a corps of 150,000 African slaves—his “Black Guard”—to coerce the region into submission.<sup>28</sup>

Historians have documented how the rights of enslavers, enslaved and slave-owners were codified in Islamic law.<sup>29</sup> Contestation over slaves was often the site *fatwas*.<sup>30</sup> Indeed, *Maliki* reference manuals circulated in



Mauritania and provided clear definitions with respect to slavery and slave transactions.<sup>31</sup>

The first African slaves brought to Portugal in 1444 came from Cape Branco, in what is today northern Mauritania. Between 1450 and 1500, approximately 80,000 slaves were taken from the region to farm Portuguese-held islands in the Atlantic. From Mauritania, the Portuguese moved their way down the western coast of Africa, establishing contact at the Cape of Good Hope and eastward to the Swahili coast, fomenting the slave trade in their wake.<sup>32</sup>

Slavery trading, both regional and trans-continental, markedly increased in Mauritania in the nineteenth century.<sup>33</sup> While the trans-Atlantic trade declined, slave raiding inland expanded rapidly.<sup>34</sup> Historian Ghislaine Lydon has underscored the widespread and prominent social and economic role of slave-based transactions in the many states and communities occupying the area that is now Mauritania.<sup>35</sup>

However, because much of these diverse trades were *exporting* schemes, oriented in the north and/or west, and predating the existence of the modern republic of Mauritania, they rarely feature in analyses of slavery within Mauritania today.<sup>36</sup> This shows that a strictly state-specific “vertical” view ignores slave movements of this nature predating the existence of the modern nation, and in so doing, substantiates the mistaken notion that slavery today has no connection to past slave trading.<sup>37</sup>

## **2. Impact of French Empire and Colonization**

The French monarchy’s interest in slaves from the Senegal hinterland and Mauritanian region waxed from the mid-1600s as France took control of Dutch-held islands in the Caribbean. Realizing slaves were the key to the success of its new Caribbean holdings, the French kingdom financed the creation of a slave trading monopoly, the *Compagnie des Indes Occidentales*, in 1664. In 1672, the French in Senegal offered a bounty of ten *livres* per slave transported to the Indies. The success of this endeavor

spurred the French to charter a second monopoly in 1673. By 1679, the *Compagnie du Sénégal* had twenty-one ships servicing the ports drawing slaves from the Mauritanian hinterland. During the 1730s, the French shipped more than 100,000 slaves from its ports on the West African coast. The bounty for each slave increased periodically and reached 160 *livres* by 1787.<sup>38</sup>

As the trans-Atlantic slave trade began to fall into disfavor in the late eighteenth century, the economy and society of the region that is now Mauritania was again transformed. The French Republic first declared universal emancipation in 1794, but the declaration did not ban the traffic in slaves. As enforcement of the abolition proclamation proved difficult in the Caribbean, the reintroduction of slavery by Napoleon in 1804 was not particularly contentious.<sup>39</sup>

The slave trade in what is now Senegal and Mauritania continued undisturbed until France's first abolition act. In 1817, the French monarchy decreed the banning of the slave trade in the French Caribbean territories, and in 1818, formally banned French sailors from participating in the trade. The traders, however, responded creatively to these constraints. For example, they registered their ships outside France and redirected the trade that would have gone to the Caribbean to and from Portuguese and Spanish held territories, such as Brazil and Cuba. French *négrriers* shipped 4,000 slaves per annum in the 1820s. From 1814–1830, Guadeloupe absorbed 38,000 slaves, Martinique 24,000, and Guiane 14,000.

In 1830, under King Louis-Philippe, the slave trade in the four *anciennes colonies* of Senegal and its Mauritanian hinterland was again criminalized. Although the illicit trade continued, all the French colonies abolished slavery in 1848.<sup>40</sup> Beginning in the mid-nineteenth century, the area that is today Mauritania increasingly fell under French control; and as a result, by the 1850s, emancipation and abolition were official imperial policy. It remained so as imperial authority extended south from Algeria into the Sahara, and west from the Four Communes of Senegal.

Despite a formal policy forbidding slavery, the French imperial armies nonetheless both liberated and enslaved communities as they extended control inland.<sup>41</sup> In response, between 1856 and 1908, a French antislavery organization established five villages of freedom (*villages de liberté*) for those liberated from slavery in the southern part of what is now Mauritania, an area predominantly inhabited by black communities.<sup>42</sup> In the face of opposition from traditional rulers, however, this policy was abandoned.

Ending slavery was a core element of French colonial policy in Mauritania, and it involved a variety of legal and military methods.<sup>43</sup> France recommitted to formally end slavery in its French colonial possessions when it signed the Brussels Act in 1890. Formal colonial authority over Mauritania began with the decree of June 16, 1895, which created the French West African Federation (AOF) one year after the establishment of the Ministry for Colonies.<sup>44</sup> Ostensibly an entity for coordinating French presence in West Africa, the AOF regulated trade and the movements of populations.<sup>45</sup> The AOF governed Mauritania directly from Senegal, the capital of the AOF, and the region's traditional rulers were brought under French control.

“Pacification,” as it was called, was a brutal process spearheaded by Xavier Coppolani (at least partly because of ethnic tensions at the root of the ongoing trans-Saharan slave trade into Ottoman-ruled northern Africa). Coppolani fought various groups and won concessions from others. The Zawiya tribes sought protection against the slave raids of Hassane warriors, and Coppolani formed alliances with two Qadiriyya Sufi brotherhoods, *marabouts* Shaykh Sidya Baba and Shaykh Saad Bouh. The elevated role accorded them in the colonial administration was exchanged for their religious influence over local emirs reluctant to accept French rule. Military threats reined in the emirates of Tagant, Trarza, and Brakna in 1903–04. But the northern Adrar emirate—backed by a third Qadiriyya *marabout*, Shaykh Ma al-'Aynayn and the Sultan of Morocco—was more resistant. Coppolani was assassinated near Adrar in 1905. The same year, the French issued a

decree extending the 1848 abolition to all colonies, effectively banning slavery throughout the AOF. Adrar was eventually defeated and forcibly incorporated into Mauritania in 1912, but revolts, slave raids, and trafficking in persons persisted.<sup>46</sup>

While French imperial policy transformed slavery and trafficking in slaves internally, the external (primarily Moroccan Ottoman) demand continued. The region was also subject to new international agreements attempting to mitigate transregional traffic. After the dissolution of the Ottoman Empire in 1919, the General Act of Berlin of 1885, and the Brussels Act of 1890 were reaffirmed with the Convention of Saint-Germain-en-Laye and the 1926 League of Nations Slavery Convention. Signatories reasserted their "intention of securing the complete suppression of slavery in all its forms and of the slave trade by land and sea."<sup>47</sup> From 1926, the colony of Mauritania, part of French West Africa, was subject to the new treaty. France continued to implement abolitionist policies and extend its control over Mauritania until 1939, but, as historian Ann McDougall observes, "the institution of domestic slavery, as distinct from the slave trade, remained virtually untouched by official policy."<sup>48</sup>

As the French incorporated Mauritania into the AOF, they encountered significant resistance from local communities. Mid-twentieth-century Mauritania remained very much a nineteenth-century decentralized society dominated by nomadic and semisedentary Arabo-Berber pastoralists (Moors), with Wolof and Tukolor sedentary farming communities located primarily along the Senegal River tributaries in the south. Enslaved black Africans and descendants of freed slaves bound by clientage to their former masters existed throughout all echelons of Mauritanian society. A 1904 census report from the AOF included the term "non-free," and listed 2 million of 8.25 million total inhabitants as part of this category.<sup>49</sup> French colonial historian, Jean Suret-Canale explained that the "term 'non-free' [was] a euphemism which the administration imposed . . . to avoid protests which the proper term would" provoke.<sup>50</sup> In areas of Mauritania the rate

was as high as fifty percent of the local population. Several decades later the French governor of Mauritania observed that the colony was not yet ready “for mass liberation” in the model of neighboring Senegal, Guinea, and Gambia.<sup>51</sup> The French feared that freed slaves would have “nothing to do but turn to theft and vagabondage. . . [T]he end result would be the ruin of the economy.”<sup>52</sup> McDougall has argued that although the French insisted enforcement of abolition in Mauritania would be difficult, slavery in the region was “per se much the same as in other Muslim regions along the West African sahel-southern Sahara.”<sup>53</sup> So despite the fact that the French announced a policy of abolition, they understood that Mauritanian chiefs’ and nobles’ slaves would “stay” with them. In this way, slavery was both prohibited by new law, and de facto permitted by enforcement of new law.

### 3. Post-Independence Patterns

The conflicting forces, those for and against slavery, continued the struggle between new prohibitions and lax enforcement into the postcolonial era. The colonial policy until independence in 1960 was structured around the power of the “*grands nomades*.”<sup>54</sup> The French insisted that the region was simply too large to enforce abolition; therefore, abolition was confined to validating the freedom of runaway slaves who claimed mistreatment and prohibiting the “traffic” in slaves.

Notwithstanding this distinction between slave-holding and slave-trafficking, stories of slaves being bought and sold, freed individuals being kidnapped, and slaves purchasing their freedom, abound during the colonial period. One such story includes a 1929 French law that formally recognized the right of a master to include slaves in customary inheritance settlements. While such judicial support for this seemingly contradictory policy provoked consternation among colonial officials, colonial law appeared to contribute to the expansion of slavery and trafficking in the region rather than end it.<sup>55</sup> In fact, McDougall suggests that the percentage of the Mauritanian population accorded one form of slave status—*haratin*—

actually rose from 2 to 50 percent from 1910 to 1950.<sup>56</sup> Thus, although Mauritania took some strides in the last half-century towards eradicating slavery, recent social and political setbacks continue to impede its progress. This back and forth underscores the problem of a vertical approach to slavery and abolition, insofar as it fails to take into account the role Mauritania played in regional and continental slavery and trafficking. For example, Mauritania attained independence in 1960, and though abolition was reaffirmed in the 1961 Constitution (which incorporated the principles of the Universal Declaration of Human Rights), between 1960 and 1980, slave trafficking and slave raids in Mauritania continued.<sup>57</sup>

A “racialized” enslavement, of black Africans by lighter skinned Moors, is often highlighted as a factor contributing to the political instability of the region that was a site of multiple military coups d’états.<sup>58</sup> One such coup in 1980 brought to power a military “salvation” government. The Military Committee for National Salvation issued a Proclamation on July 5, 1980, and an executive order, number 81.234 on November 9, 1981, abolishing slavery. These two statutory vehicles recognized the fact that certain forms of slavery continued to exist in Mauritania. Furthermore, a subsequent land reform act in 1983 restructured tenancy and occupancy law in order to prohibit the serfdom normally tied to landholdings.

Additionally, in 1984 Marc Bossuyt, of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights, visited Mauritania “to study the situation prevailing in Mauritania with regard to slavery and the slave trade with a view to assessing that country’s needs in its struggle to end such practices.”<sup>59</sup> Accompanied by Peter Davies of Anti-Slavery International, Mr. Bossuyt announced to the United Nations in 1984 that abolition had indeed taken effect. He recommended that the government of Mauritania create a specific body entrusted with the following tasks: coordination of the struggle against slavery to which any person experiencing difficulties in that field could apply; implementation of further civil status legislation

reform to help former slaves become conscious of their legal status as free; and invitations to religious authorities to explain why, in their view, abolition conformed with *shari'a*.<sup>60</sup>

#### 4. 2007 Slavery Act

Notwithstanding Mr. Bossuyt's recommendation, Amnesty International reported in 2002 that there was no evidence that a commission was ever created to compensate those subjected to slavery.<sup>61</sup> Instead, it noted that the Mauritanian government flatly denied the existence of slavery and related human rights abuses. In September 2001, before the UN Committee on the Rights of the Child, the Mauritanian government stated, "Mauritanian society had never known servitude, exclusion or discrimination, either in the pre-colonial or colonial period or since independence, and so no vestiges of such practices could thus persist."<sup>62</sup> Others have argued that slavery in Mauritania is essentially an economic model that requires a process of financial emancipation.<sup>63</sup>

The 2003 USDOS TIP report confirmed that slavery and its related human rights abuses still exist in Mauritania. In a special comment the USDOS TIP report stated:

The problem in Mauritania deals with reports of internal trafficking in persons, primarily for forced labor. Slavery was prohibited in 1981, but some former slaves reportedly work without remuneration to retain access to the land they traditionally farmed. We have no hard data on the numbers of individuals in forced labor situations. Lack of economic alternatives and deeply embedded psychological and tribal bonds make it difficult for many individuals who had ancestors who were slaves to leave their former masters. Adult females reportedly often find it difficult to leave servitude because former masters may claim to be the father of the children and refuse to allow the children to leave. Trafficking of children occurs for domestic servitude and forced labor. Some children are trafficked to the Middle East as camel jockeys.<sup>64</sup>

Government representatives responded to these criticisms with the argument that because the 1981 statute abolished slavery, all that remained were its economic, social, and cultural after-effects of slavery, not slavery itself.

But then, in a seeming admission of the failures of the 1980s emancipation, the government adopted the Act for the Suppression of Trafficking in Persons (Act No. 2007-048). The law criminalized the recruitment, transport, and transfer of persons by threat or force for sexual and economic exploitation. Criminal penalties included hard labor for life for those convicted of such crimes.<sup>65</sup>

On September 3, 2007, the Slavery Act criminalizing and punishing slavery came into force. Article 2 of the Act defines slavery as “the exercise of all or some of the rights of property over one or more persons.”<sup>66</sup> Article 3 prohibits “discrimination, in any form, against a person alleged to be a slave.”<sup>67</sup> According to the act, the crime of slavery occurs when “any person reduces another person or a person under their care or responsibility, to slavery or incites them to forfeit their liberty or dignity, for the purpose of enslaving them” and “is punishable by 5 to 10 years’ imprisonment and a fine of approximately US \$2,000–4,000.”<sup>68</sup> The law also codifies “offences of slavery,” which are punishable with prison sentences of between six months and two years and a fine.<sup>69</sup> “Offences of slavery include[:] appropriating goods, products or earnings resulting from the labor of a slave; prejudicing the physical integrity of a slave[:] or denying the child of a slave access to education.”<sup>70</sup>

Like the 1981 order, the new law also provides for assistance and monetary compensation to those released from slavery and criminalizes practices such as the sexual exploitation of female slaves by their masters and the act of seeking to justify slavery. In addition, those who fail to pursue an investigation of alleged slavery, including governors, prefects, local chiefs, and police officers, may be liable to prison sentences and a fine.<sup>71</sup> Thus, again the law was expanded to include a variety of new forms



of slavery, labor coercion, and trafficking, but there is little in the way of implementation, funding, and enforcement.

Despite its robust language, this new law underscores the observation that the antislavery and anti-trafficking laws of Mauritania, once passed, are never implemented. Although UN Special Rapporteur Gulnara Shahinian, who investigated slavery in Mauritania, commended the enactment of the 2007 Slavery Act for providing a clear message that slavery will not be tolerated in Mauritania, she has since emerged as a critic of the law. In the four years since its passage, no case has been brought before the courts based on the new law. Ms. Shahinian noted that, “[t]he law addresses only the individual criminal liability of slaveholders; it thus relies entirely on the police and prosecution for its enforcement. In interviews with both government officials and civil society representatives, enforcement was raised as a problem that allows slavery to continue.”<sup>72</sup> Despite the enormous public fanfare about the new law, little has changed. In 2009, the Ministry of Justice created a commission to review the law and provide suggestions on how to strengthen it, in view of the fact that no one had ever been prosecuted under the law.

##### **5. Failure of the 2007 Act**

The 2007 law provided a mechanism whereby human rights workers could denounce slave-like practices;<sup>73</sup> however, instead of prosecuting slavery, the Mauritanian government is now prosecuting those who denounce slavery.<sup>74</sup> From contemporary accounts it appears that slavery is alive and well in Mauritania, and that the law is not being enforced.<sup>75</sup> And even the UN Rapporteur is backpedaling on her earlier praise of the law. She now describes it as “too vague in its definition of slavery, as many master-servant dependencies—often encompassing former slavery bonds—fell short of inclusion in the antislavery policy.”<sup>76</sup>

The 2010 USDOS TIP report notes that Mauritania is “a source and destination country for men, women, and children subjected to trafficking in

persons, specifically conditions of forced labor and commercial sexual exploitation.”<sup>77</sup> But the otherwise generic preamble is followed by an observation unique to Mauritania, insofar as the USDOS identified the existence of “traditional slave castes” wherein men, women, and children “are subjected to slavery-related practices, rooted in ancestral master-slave relationships,” forms of which “continue to exist in a limited fashion in both rural and urban settings.”<sup>78</sup> According to the USDOS, “these individuals, held for generations by slave-holding families, may be forced to work without pay,” in a variety of occupations, including “cattle herders and household help.”<sup>79</sup> And because the government “does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so,” Mauritania was only one of three sub-Saharan African nations to be accorded the 2010 TIP report’s lowest classification for anti-trafficking activity: Tier Three.<sup>80</sup>

From this vertical narrative it becomes apparent that Mauritania is the site of repeated attempts at abolition and enforcement of anti-trafficking laws. Constitutional articles, decrees, orders, and acts of legislation have been enacted, promulgated, and pronounced with little success. But more importantly, the Mauritanian state’s apparent inefficacy is reified as a national issue and domestic cultural attachment.<sup>81</sup> One would be forgiven for thinking that there is something particularly Mauritanian about slavery, because it is difficult to see the regional persistence of slavery and the regional dimensions of antislavery action without comparing the processes of abolition with neighboring regions.

This vertical approach to slavery and abolition just described is unworkable because state-driven narratives obfuscate the fact that similar experiences and processes are ongoing simultaneously throughout the West African region. As shown above, the repeated nation-centric remedies fail to account for both the regional trafficking networks and flows and the persistence of cultural practices underpinning slave-based economies far beyond the national boundaries of Mauritania. Moreover, the nature of these

processes of abolition, and the implications of a regional and transnational dynamic only become apparent with a horizontal description of the types of abolitionist activities. Part two will show how a horizontal approach to slavery and abolition will be much more effective than looking at nation-states in isolation.

## II. THE “TREND” REVEALED: A “HORIZONTAL” APPROACH TO ABOLITION AND ANTI-TRAFFICKING

The African continent has a rich history of abolition and anti-trafficking laws. From the era of the trans-Atlantic slave trade via early imperial expansion, to the mature period of colonial rule, Africa has been the site of important experiments in antislavery legislation. African social, political, and economic systems were reshaped in response to successive attempts to extinguish slavery and slave trades. Over the course of approximately two hundred years, as the slave trades and slavery were progressively abolished in different regions of the globe, the African continent was often among the first regions to experience broad abolition experiments.<sup>82</sup> And as the many stages, or trends, of abolition transformed what was previously a legal economic activity into an illegal and illicit practice, new legislative responses were spawned. Each trend provides insight into the nature of slavery and the legal framework of abolition.

Although the first acts of abolition were promulgated in Europe and North America, their focus was on the origins of the trans-Atlantic slave trade in Africa. Anti-trafficking efforts thus outwardly extended both spatially and temporally from continental Africa. An examination of the successive attempts to legislate abolition demonstrates the centrality of the region to anti-trafficking initiatives insofar as many legislative endeavors envisioned ending slavery *on the continent*. Similarly, mechanisms to combat evasion of new laws banning the trade that were geographically focused on West Africa were slowly extended to other areas. For example, naval patrols, freedom courts, freedom colonies, and other physical

realizations of legislative goals fanned out from West Africa across the Atlantic to the New World.

In this context of expanding illegality, categories and identities emerged and were reinforced by subsequent legislation. For example, women and children became increasingly visible as objects of enslavement and subjects of antislavery legislation, because slavers actively attempted to circumvent controls on the slave trade.<sup>83</sup> For example, the 1788 "Dolben's Act" limited the number of slaves carried by British vessels, thus raising transportation costs and diminishing the incentive for slavers to ship low-value slaves such as children.<sup>84</sup>

Normative practices of enslavement shifted in the context of the emergence and expansion of international abolitionist legal frameworks in the Atlantic world from the early 1800s onward. In contrast to the effect of the Dolben Act, historian Jelmer Vos argues that the proportion of child slaves grew after Britain withdrew from the trade and reached especially high levels during the illegal phase of trafficking in West Central Africa. At that time, practically one in two slaves sold in the Congo ports was under fifteen years old.<sup>85</sup> Moreover, the formal colonization of Africa from the late nineteenth century coincided with a renewed commitment to end the slave trade in African colonies. Thus, nineteenth-century legislative agendas and enforcement strategies are important antecedents to the late twentieth and early twenty-first century campaigns against enslavement and trafficking. In the following sections, we examine characteristics of five trends of legislative action over time that ultimately provide the backdrop for predictions about the efficacy of current attempts at abolition.

#### *A. The Pelagic Trend: Prohibiting Oceanic Slave Trading*

The first identifiable trend began in the late eighteenth and early nineteenth centuries as European powers contemplated abolition of the trans-Atlantic trade. This trend focused on Africans being removed from the continent. For convenience, we identify this as the *pelagic* trend because the

legislative enactments are almost exclusively focused on prohibiting cross-ocean trade. The reconceptualization of the slave *trade* as slave *traffic* was a fundamental rhetorical intervention reflecting legislative and diplomatic initiatives that progressively eroded support for the slave trade.<sup>86</sup>

The pelagic trend began with Denmark in 1792. Following the Danish Kingdom's prohibition of the slave trade for its nationals, Britain pursued aggressive international diplomacy designed to compel or "shame" other slave trading nations into joining the prohibition on the trade.<sup>87</sup>

The Atlantic trade operated under gradually tightening constraints spanning many decades from 1792 to 1867. The ban on British-flagged and American-flagged vessels transporting slaves came in effect in 1808. At about the same period, the British established Sierra Leone, and its port of Freetown, as its base for the first antislaving naval patrols. An 1810 treaty eroded the Portuguese trade and banned the slave trade in the North Atlantic. In 1817, a decree by Louis XVIII abolished the French trade, and Portugal signed a treaty with Britain conceding the "Right of Search" (allowing the Royal Navy to search vessels suspected of trading slaves). "Mixed Commissions" were established to regulate the slave trade south of the equator (i.e., to Brazil). Spain also signed a treaty with Britain abolishing the slave trade north of the equator with similar conditions and committed to abolishing the slave trade entirely after May 30, 1820.<sup>88</sup>

One of the fundamental contributions of this first trend was its emphasis on the relationship between national legislative action and diplomatic pressure. It has been widely observed that the British parliament's decision to withdraw from the trade was a leap of faith only made effective by the British government's subsequent relentless cajoling and bullying of other nations to make similar commitments.

A secondary matter, so obvious in hindsight but revolutionary at the time, was the decoupling of slavery from the slave trade. The decision to abandon the trade and force other nations to follow suit reflected a widely held belief among abolitionists that ending slavery and slave-based economies could

only be accomplished once the legal traffic ceased. This piecemeal abolitionist hypothesis partly explains the incremental early successes of abolitionists in North America, and also the stonewalling of abolitionists toward midcentury. For example, while the United States ended slave imports in 1808, it was not until 1820 that overtly abolitionist legislation gained traction with the passage of the Piracy Law declaring the American slave trade an act of piracy punishable by death.<sup>89</sup> The abolitionist agenda was furthered on a state-by-state legislative basis, as members of the Union explored avenues to resettle former slaves in West Africa.<sup>90</sup>

*B. The Telluric Trend: Wholesale Emancipation of Slave Populations*

The second trend of African abolition dismantled colonial and imperial slave systems on the ground in the Americas and Asia, and spanned circa 1830–70. Its focus was on enslaved populations laboring in colonial territories, including Africans already removed from the continent. We name this second trend the *telluric* trend, because it was concerned with land-based slavery. This second trend primarily involved the wholesale emancipation of working populations who subsequently largely remained in situ or close proximity to their locus of enslavement. While individual colonial powers approached the issue of slavery on an individual basis, viewed historically, the existence of a trend of antislavery legislation is incontrovertible.

Abolition of slavery during this telluric trend extended far beyond the African continent, and patterns of abolition in the West Indies were imported to British India. From 1833–38 the British Empire dismantled slavery in its colonies (but not in its protectorates or dependencies) followed by France in 1848.<sup>91</sup> By the 1840s the United States and United Kingdom joined forces in policing the Atlantic. And throughout the 1850s the slave trade and indeed slavery were progressively abolished throughout Central and South America.<sup>92</sup> British colonial India featured prominently in this second legislative trend. Henry Bartle Frere estimated a population upwards

of sixteen million slaves in all of India in 1841.<sup>93</sup> The Indian Slavery Act of 1843 abolished slavery in both Hindu and Muslim India. A revision of the Indian Penal Code in 1861 formally made the enslavement of human beings a criminal offense.<sup>94</sup> This wholesale emancipation grappled with considerably greater volumes of people than the previous trend.

Out of this second trend emerged an issue of fundamental importance for future abolition efforts, namely, the considerable propensity for former slaves to remain on or near their former slave compounds, but simultaneously create their own discrete domestic and laboring economies. This underscores a central strength of the “horizontal” approach insofar as it facilitates a comparative perspective with respect to emancipation over large regions and territories.<sup>95</sup> Anxieties about slave departures and the collapse of economies had fueled proslavery activism. But the transformations visited on economies in postemancipation societies confounded both abolitionists and slavery apologists from the West Indies to India. Postemancipation upheavals in the Western hemisphere and India were fodder for subsequent policy enactments in Africa.

Like the first trend, the legal processes of emancipation were exclusively domestic in origin and buttressed by diplomacy and negotiation. As ever more regions and modalities came under scrutiny, illegality of the slave trade, established via bilateral and multilateral treaties but enacted by domestic statute, continued to fan out across the Atlantic and Indian worlds over several decades continuing into the 1860s. But the stakes raised by wholesale emancipation were considerably higher than those pertaining to banning the traffic in economies where slave numbers were stable or increasing.

The US affection for slavery collapsed in the violence of civil war, and the final abolition statutes were passed by Cuba and Brazil in 1886 and 1888 respectively after intense domestic struggles.<sup>96</sup> This abolition trend thus shows how similar processes in adjoining and nonadjoining territories had complementing effects. Different regions of the world drew on the

abolition experiences of other regions, and legislative responses built on and adapted those of regions that had already enacted the wholesale emancipation of enslaved populations.

*C. The Imperial Trend: Extending Abolition into Africa*

The third, *imperial* trend of legislative abolition is situated on the African continent. The name, imperial, connotes the epoch and also the ideological motivation behind the abolition policy. The previous trends prohibited the removal of Africans from the continent, and subsequently the coercion of labor of those already removed. The imperial trend of legislative abolition had a new focus: on slave trading and enslavement within Africa, including what was sometimes referred to as domestic or African slavery, to distinguish it from the trans-Atlantic slave trade and plantation slavery in the New World. The trend is imperial because abolition went hand in hand with the expansion of "legitimate" commerce in Africa.<sup>97</sup> While the preceding pelagic and telluric legislative trends concerned Africans removed from the continent, the imperial trend extended antislavery activities deep into the continent and its statutory basis was new and innovative.

Extending antislavery legislation into the African continent was an important departure from the previous trends because it represented a new move to change political, economic, and social life within Africa. Beginning with the Berlin Declaration of 1885 and the Brussels Act of 1890, European powers with African colonial interests or aspirations regularly and repeatedly agreed to ban the slave trade and end slavery in their colonial possessions.<sup>98</sup> As they seized control of territories and moved military forces inland, decrees and proclamations proclaimed the end of slavery. Whether Nigeria or South Africa, Tanganyika or Senegal, colonial powers announced that their regimes would no longer enforce requests by slaveholders to sustain claims on coerced labor.



Yet while colonial powers formally abolished slavery in colonies, protectorates, and newly “pacified” territories, they often did little to enforce the legislation or decrees. European powers established special courts to hear freedom petitions and navigate the proliferation of claims of repossession by disgruntled former masters, but slave owners faced an uphill battle to recover labor or compensation. Slave forms persisted, as did slave trades, but the scale of enslavement and trade diminished from its eighteenth- and nineteenth-century heights.<sup>99</sup>

The imperial trend of abolition was a marked departure from earlier processes in several respects. It speaks to the value of a horizontal analysis by revealing some of the early political considerations informing a region-wide programmatic endeavor in Africa. First, abolition featured as a commitment undergirding the political project of imperial expansion. Second, emancipation was disseminated by proclamation to territories only partially under imperial control, albeit via colonial officials employed by regimes steered by popular assemblies to varying degrees. Third, for all intents and purposes, emancipation was directed exclusively at Africans: Africans trafficking and enslaving other Africans. And fourth, the processes of emancipation, including tribunal hearings and freedom petitions, revealed the deeply gendered character of coerced labor on the continent.

While the first three of these differences were apparent to imperial powers to varying degrees, the fourth came as a surprise. Women were central to the expansion of slavery during the nineteenth and twentieth century, and indigenous articulations of Islamic law shielded many communities from the Eurocentric legislative paradigms of abolition.<sup>100</sup>

Moreover, the extension of abolition to the continent was not without other side effects. For example, somewhat paradoxically, efforts to suppress the slave trade in the Atlantic appear to have stimulated the trade in the Indian Ocean.<sup>101</sup> Indeed, historians Gwyn Campbell and Ned Alpers and legal scholar, Bernard Freamon, hypothesize that the greatest expansion of the slave trade in the Indian Ocean occurred in the nineteenth century.<sup>102</sup>

These are important observations with respect to a horizontal analysis, because they underscore how actions in one part of Africa affect other regions.<sup>103</sup> It is inadequate to explore abolition or antislavery strategies on a state-by-state basis.

*D. The Colonial Trend: Expanding International Scrutiny*

The fourth, *colonial*, trend of abolition began in the early twentieth century with the 1904 and 1910 revision of the International Convention for the Suppression of the White Traffic, and was extended by the creation of the League of Nations and the International Labor Organization after World War I. We call it colonial because it coincided with “mature” colonial rule in Africa, and the language of many of its signature elements resonated with the paternalist overtones of classical colonial ideologies.<sup>104</sup> The 1910 convention was an important recognition of the highly ethnicized and racialized framework of previous legislative approaches to abolition insofar as it directed attention to a group heretofore ignored by legislators.<sup>105</sup> The value of a horizontal approach to examining antislavery and anti-trafficking legislation is clearly visible here insofar as the legal instruments envisioned for anti-trafficking were regional in terms of vision. Treaties and conventions were not bilateral or unilateral, nor did they represent actions by individual colonial parties. Rather, by emerging from international negotiation, they paved the way for future expansive global negotiations resulting in the creation of anti-trafficking instruments.

While the 1910 Convention represented a formative step in a tentative international regime designed to criminalize and suppress the increasingly organized international trafficking of white women for the sex trade, it was only one of a new trend of international legislative tools enacted in a variety of contexts. The 1910 Convention prefigured a revitalization of humanitarian sensibilities that informed the first trend of anti-trafficking legislation, but it differed insofar as it acknowledged the persistence of slavery and the necessity of distinguishing between legitimate migration

patterns and trafficking in coerced labor.<sup>106</sup> The subsequent 1926 Slavery Convention of the League of Nations expanded the remit of anti-trafficking by wading cautiously into the previously uncharted territory of colonial power.

The fourth trend built on a key innovation of the third—namely, internationally negotiated settlements and definitions—and it expanded the reach of both. While the 1890 Brussels Convention reinforced imperial authority with a moral obligation, the fourth trend of abolition emerged in the context of an explicit critique of colonial practices.<sup>107</sup> Growing international revulsion about persistence of slavery and coerced labor in colonial Africa provoked the Council of the League of Nations to appoint, in 1922, a Temporary Slavery Commission to report to the League on the prevalence of slavery among member states and their respective territories. The 1924 report on slavery embarrassed member states, including many colonial powers.<sup>108</sup>

One direct result of the report was a requirement by the League of Nations Permanent Mandates Commission that colonial mandate powers report regularly about the status of slavery and the slave trade and efforts at suppression.<sup>109</sup> This reporting mechanism effectively exposed European colonies to scrutiny with respect to colonial labor practices and resulted in intensified policing of African workers and the workplace.<sup>110</sup> The 1930 Forced Labor Convention further diminished the capacity of colonial powers to dictate labor standards.<sup>111</sup> While the League was notoriously weak and colonial states had limited capacity to broadcast power to the distant margins of colonies, this fourth trend of legislative action deeply altered the structure of labor coercion in colonial Africa.<sup>112</sup>

A secondary issue emerging from this fourth trend was the widespread acknowledgement of the gender of slavery. By the 1940s, coerced labor in sub-Saharan Africa was comprised almost exclusively of women and children.<sup>113</sup> While the imperial trend of emancipation made this apparent,

the colonial trend incorporated language to this effect into the text of new laws and treaties.<sup>114</sup>

*E. The Postcolonial Trend: Redomesticating Anti-Trafficking*

A fifth, *postcolonial*, trend of anti-trafficking activity was ushered in following World War II and the United Nations' Universal Declaration of Human Rights (1948). We use the phrase "postcolonial" to highlight both the time period of this trend (immediately upon independence) and elements of the anticolonial and nativist context of legislative processes in newly independent nations. The declaration, signed by European colonial powers and incorporated into many newly independent African nations' constitutions, mandated universal freedom and the explicit abolition of all forms of slavery, servitude, and the trade in slaves. Conventions first extended the anti-trafficking remit of the UN beyond "white women" to all of womankind.<sup>115</sup> While the second half of the twentieth century witnessed an increasing public awareness of the persistence of slavery, the first movement to acknowledge a variety of what might be collectively described as "unfreedoms"<sup>116</sup> among the many newly independent African nations was achieved when the UN General Assembly passed the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956.<sup>117</sup> This convention prohibited "practices similar to slavery," including debt bondage, serfdom, coerced marriages, and exploitation of child labor.<sup>118</sup>

The principal characteristic of the fifth trend was the redomestication of the antislavery and abolitionist legislative paradigm following the models of the previous trends, insofar as antislavery action becomes once again a domestic affair. The pelagic trend enshrined the central role of domestic legislative action to antislavery campaigns. Whereas international negotiation was a key characteristic of the imperial and colonial trends, the fifth trend differed markedly. The colonial and imperial trends broadened and internationalized the definitions of "freedom" and "practices similar to

slavery,” because more nations were able to be part of the deliberative process. By contrast, with the enactment of international treaties and conventions as domestic legislative apparatuses, the postcolonial trend reified the enforcement of international mandates and human rights as an exclusively domestic undertaking.<sup>119</sup> In the urgency to establish and cement the meaning of independence and the end of colonial rule, many African nations adopted distinctly defensive and even nativist attitudes to external criticism of the persistence within their territories of coerced labor and the traffic in humans.<sup>120</sup> Thus in the postcolonial world, newly independent African nations chartered an anti-trafficking and abolition course that mirrored actions of the earlier trends. An examination of antislavery and anti-trafficking legislation subsequent to the domestic implementation of the 1956 convention reveals the value of the horizontal framework of analysis.

### III. CONTEMPORARY LEGISLATIVE RESPONSES TO TRAFFICKING IN SUB-SAHARAN AFRICA

As demonstrated by the earlier overview of Mauritanian history, many analyses of antislavery and anti-trafficking initiatives fail to account for the relationship between national actions and convergent regional or transnational events. In contrast with national, vertical narratives, the macro analytical model puts national actions in regional and transnational context. And the horizontal approach also demonstrates the existence of larger-scale processes or trends.

A specific legislative trend may have leaders and followers. It may involve pressures and incentives. Closer scrutiny of the five aforementioned trends would further reveal the complex processes at play, although such an examination is beyond the scope of this article. We offer a description of these trends primarily to demonstrate the value of the horizontal approach of larger-scale, regional analysis. Within each legislative trend, there are variations with respect to the specific action taken and instruments adopted.

As we shall see, the current “neo-abolitionist” legislative trend comprises of three forms of legislative responses.

*A. General Characteristics: When Do Legislative Actions Become a “Legislative Trend”?*

To recap our introductory observation, as a concept, the legislative trend conveys the idea that a broad, seemingly collaborative program of legal remedy is underway, affecting multiple legal sites and jurisdictions simultaneously or successively. An abolitionist legislative trend (i.e., one focused on ending slavery or trafficking) expands beyond these core considerations by addressing specific issues emerging from the processes and practices attendant to enslavement, illicit slave movement, and the full spectrum of slave-like practices existing under the rubric of labor coercion. A legislative trend is perhaps more readily identified after some time has elapsed since the flourish of new legislative activity. The global wave of domestic violence legislation in the 1980s and early 1990s may be one example; another would be the surge in “children’s acts” as the international community enshrined in national law the mandates of the 1989 International Convention of the Rights of the Child. Indeed, conceived of this way, there are many legal topics and issues that might ostensibly be interpreted as the product of a legislative trend.<sup>121</sup>

At some point individual legislative action by individual states gains the appearance of a concerted action. We say “appearance” because it would be unwise to discount the value of domestic legislative agency. At a certain point this appearance of a concerted action constitutes a legislative trend. We identify six characteristics of an abolitionist legislative trend. The characteristics of the legislative trend emerge from the antecedent experiences of antislavery and anti-trafficking activity.

First, the mooted or promulgation of similar or consistent legislative apparatuses or legal processes in multiple discretely domestic locations—nation-states, colonies, or territories—is the initial forewarning of an

incipient trend. Second, the emergence of a trend is situated at the dynamic interface between domestic, international law and nongovernmental activism. Third, the strength of the trend is measured by its capacity to harness the political, economic, and social pressures afforded by international diplomacy, nongovernmental activism, and the public performance of international negotiation. Fourth, a trend is evidenced by the emergence of differentiation between categories of enslavement and labor coercion, such as women, children, and the indentured. Fifth, the trend is visible when legislation appears to respond to shifting modalities of slave mobility, such as forced migration and human trafficking traversing borders, subregions, and continents. And finally, the existence of a trend is reinforced by evidence of a “pushback” or resistance to antislavery efforts by certain states and nonstate actors.

*B. The “Neo-Abolitionist” Trend*

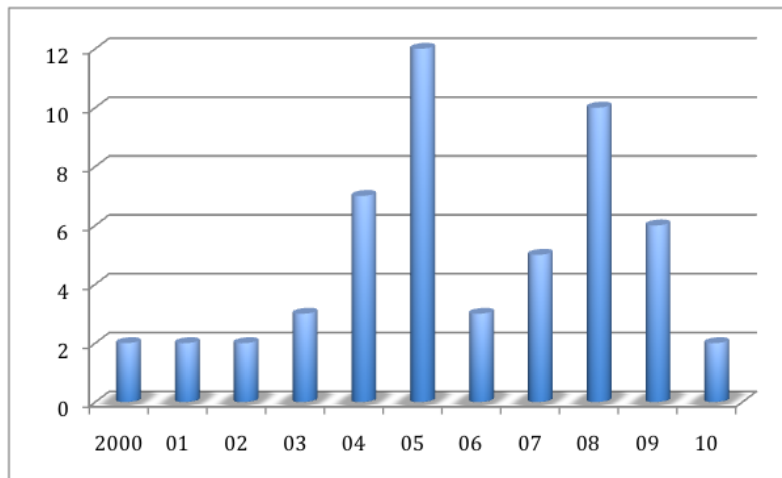
Sub-Saharan Africa is currently in the grip of a new contemporary legislative trend—a sixth, neo-abolitionist trend. We adopt the term “neo-abolitionist” to distinguish this current trend from the previous five trends outlined above. Furthermore, the term draws attention to the collaborative role of nonstate actors (especially NGOs), in the promulgation of individual domestic laws. The term “neo-abolitionist” first appeared in the 1960s to describe the heightened activity of US civil rights advocates and their focus on legislative remedy.<sup>122</sup> Subsequently, neo-abolitionist appears as a description of a branch of revisionist scholarship reevaluating the achievements of antebellum abolitionism and postbellum Reconstruction.<sup>123</sup> Here, the term neo-abolitionist alludes to the rhetorical interventions and advocacy operations of contemporary anti-child-trafficking advocacy.<sup>124</sup>

This neo-abolitionist trend is demonstrable by factors including the increasing promulgations of new laws since 2000; the coordinated efforts of international, intergovernmental, and nongovernmental agencies and organizations; the appearance of new forms of diplomatic, economic, and

social pressures; the tailoring of legislative remedies to perceived new forms of enslavement and trafficking; and the resistance to the campaign for new laws by state, and to a lesser extent nonstate, actors.

From 2000 to 2010, and predating the inception of the USDOS TIP reports, approximately fifty entirely new individual labor laws, anti-trafficking statutes, or significant amendments have been passed by African legislatures. By late 2010, forty-four of fifty-one sub-Saharan African nations had passed new antislavery and anti-trafficking statutes.<sup>125</sup> A number of states also have pending or mooted legislation revising, enhancing, and expanding current law. The passage of new anti-trafficking laws escalated quickly during the first half of the decade, then briefly slowed only to resume again quite recently. Chart One below demonstrates that 2005 was the peak year in terms of the passage of new legislation, and 2008 was the year of the next greatest number of legislative changes.<sup>126</sup>

**Chart One: New, Draft, or Amended Laws, Bills, and Codes Pertaining to Trafficking in Sub-Saharan Africa, 2000–2010<sup>127</sup>**





### 1. The First Statutes

The contemporary neo-abolitionist legislative trend appears to begin in 2000 with the passage of Malawi's Employment Act, Act No. 6 of 2000 (Malawi Act). This act was the first significant legal intervention in forced labor in sub-Saharan Africa in almost two decades. Prior to 2000, very few African nations had attempted to pass legislation pertaining to coerced labor or the forced or illicit movement of individuals for exploitative labor purposes. The only two significant new legislative tools worthy of note—Mauritania's aforementioned decree banning slavery and subsequent statute, and Cote d'Ivoire's Penal Code revisions—date from the early 1980s.<sup>128</sup>

Malawi's 2000 legislation is important because it demonstrates the first legislative response to an increasing international interest in human trafficking and labor exploitation, although the Malawi Act predates the TIP reports. Part II, Section 4 of the Malawi Act described two fundamental principles, whereby "no person shall be required to perform forced labour," and any "person who exacts or imposes forced labour or causes or permits forced labour shall be guilty of an offence and liable to a fine of K 10,000 and to imprisonment for two years."<sup>129</sup> Moreover, combined with a revision of the penal code, the Malawi Act provided for an effective anti-trafficking response. The 2010 USDOS TIP report noted that "though the country lacks specific anti-trafficking laws," Malawi remained in good standing because it "prohibits all forms of trafficking through various laws."<sup>130</sup> And as we shall see, Malawi continued to resist pressure for a new law until the passage of the 2010 Child Care, Protection and Justice Act.

Statutes pertaining to labor and coercion continued to percolate through legislative assemblies and executive committees for the first several years of the new millennium, although they were at first few in number. After Malawi's Employment Act, Eritrea's Proclamation No. 118/2001 became the next important milestone. This proclamation defined forced labor as "any service which a person performed involuntarily due to the coercion of

another person,” and highlighted mechanisms of coercion, including “any work performed involuntarily merely because of someone’s influence as a result of his holding a public office or traditional status of chieftaincy.”<sup>131</sup> Coupled with penalties described in the penal code, Eritrea took an early stance on labor coercion, if not specifically on trafficking for labor purposes.<sup>132</sup> But where Malawi’s resistance to a specific human trafficking law was bolstered by demonstrable enforcement of existing statutes, the 2010 USDOS TIP report notes that in spite of establishing these and other constitutional and statutory tools, Eritrea “has never used these statutes to prosecute cases of human trafficking.”<sup>133</sup>

The appearance of statutes and other prosecutorial mechanisms with specific language directly pertaining to trafficking began in 2002 with the revision of Mali’s *Code Pénal*. The February 2002 revision was noticed by the USDOS’ Office to Monitor and Combat Trafficking in Persons (OMCTP), which commented in its 2002 TIP report that while Mali “does not yet fully comply with minimum standards for the elimination of trafficking . . . , it is making significant efforts to do so.”<sup>134</sup> Article 244 of Mali’s code extended the existing definition of illegal contracts that deprived an individual of liberty to children. By defining trafficking as “the collective process by which a child is moved or removed internally or externally from the country in such a condition that s/he is transformed into a chattel (*transforment en valeur marchande*) by one or more of the individuals involved, regardless of the final point of removal of the child.”<sup>135</sup> The substantive definition is expanded to include “any act involving the recruitment, transportation, concealment, or the true identity (*la vérité*) of a child,” and “any act leading to” the removal of a child internally or externally.<sup>136</sup> Punishment for a violation of article 244 is five to twenty years in prison, which the USDOS observed in 2010 to be “sufficiently stringent and comparable with penalties for sexual assault.”<sup>137</sup> Notwithstanding this observation, the 2009 demotion of Mali to the Tier Two Watch List indicates that Mali’s government remains under

considerable pressure from international NGOs and the US government to adopt comprehensive anti-trafficking legislation.<sup>138</sup>

## 2. First Indications of Emerging Distinctions in Legislative Responses

By 2003, the passage of two entirely new laws devoted to human trafficking explicitly put anti-trafficking law on the legislative radar in sub-Saharan Africa. Furthermore, 2003 also provided the first instance of a divergence in legislative response between “child-centric” and “blanket” approaches to all forms of trafficking. For example, Burkina Faso and Nigeria passed laws in May and July respectively. Burkina Faso’s Loi No. 038-2003/AN, “*portant la définition et la répression du trafic d’enfant(s)*,” adopted on May 27, 2003, defined a child trafficker as “any person who, independently or in an organized associative capacity, accompanies, incites, facilitates the movement (*le déplacement*), transit, or stay or housing (*le séjour*) of children,” pursuant to the description of trafficking.<sup>139</sup> The expansive definition of child trafficking included, “any act whereby a child is recruited, transported, transferred, hous[ed] or welcomed internally or externally of the country.”<sup>140</sup> Punishments included imprisonment up to five years and a fine up to 1.5 million FCFA.<sup>141</sup>

By contrast, Nigeria’s Act 23 of 2003 created a National Agency for Prohibition of Traffic in Persons and Other Related Matters (NAPTIP). In so doing, Nigeria elevated human trafficking beyond Burkina Faso’s simple extension of criminal law to an entirely new administrative level. In creating NAPTIP, Article 4 of the Nigerian law delegated to an agency the power of “co-ordination of all laws on traffic in persons and related offences and the enforcement of those laws,” and the responsibility for the “adoption of measures to increase the effectiveness of eradication of traffic in persons.” The text of Act 23 provides expansive categories for anti-trafficking enforcement. The definitions of “trafficking” and “trafficked person” are consistent with evolving international definitions.<sup>142</sup>

Interestingly, Nigeria is also the first sub-Saharan anti-trafficking law to simultaneously deploy the language of slavery, stating:

Any person who imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave or accepts, receives, or detains a person against that person's will as a slave, commits an offence and is liable on conviction to imprisonment for life.<sup>143</sup>

Nigeria's northern neighbor, Niger, however, elected simply to amend Article 270 of its penal code to prohibit slavery.<sup>144</sup>

The fundamental divergence into three legislative responses, to which we will shortly turn our attention, dates to the actions of Mali, Nigeria, Niger, and Burkina Faso. The divergence intensified over the next several years, with small but instructive shifts. In 2004, Namibia and Equatorial Guinea followed Nigeria and passed laws incorporating language pertaining to *human* trafficking.<sup>145</sup> Namibia incorporated human trafficking within its Prevention of Organized Crime Act, No. 29, and is the first law to also include human organ trafficking.<sup>146</sup> Equatorial Guinea melded smuggling with trafficking in the publication in the *Boletín Oficial* of the Law on the Smuggling of Migrants and Trafficking in Persons. Lesotho followed Burkina Faso's lead by adopting the Children's Welfare and Protection Bill, which described child trafficking as

the recruitment, transportation, transfer, sale, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.<sup>147</sup>

Gabon also passed a child trafficking law.<sup>148</sup> Ethiopia, for its part, mirrored Malian conservatism by revising its criminal code to include language pertinent to child trafficking.<sup>149</sup>

The peak year of the decade long legislative trend was 2005 during which at least twelve new anti-trafficking statutes were promulgated.<sup>150</sup> The

influence of the trafficking definitions standardized in the Palermo Protocols of 2000 is much clearer in the slew of new laws among those following Nigeria's lead. Sierra Leone's Act No. 7, the Anti-Human Trafficking Act, adopts the language of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, almost verbatim.<sup>151</sup> The definition of trafficking in Liberia's Act to Ban Trafficking in Persons Within the Republic of Liberia mirrors its neighbors' acts.<sup>152</sup> By contrast, Senegal's Loi n° 2005-06 "*Relative à la lutte contre la Traite des personnes et Pratiques assimilées et à la Protection des victims,*" contained no definition of trafficking at all. Among those nations adopting a child-centric approach, Cameroon's Loi n° 2005/015 du 29 décembre 2005 "*relative à la lutte contre le trafic et la traite des enfants*" incorporated a definition very similar to Burkina Faso. Mauritius and South Africa passed child protection acts incorporating terminology on child trafficking. Several other nations continued processes of revising existing criminal codes and labor laws, a path that indicates a strong disinclination to embrace the necessity for new law. Moreover, the new laws of 2005 demonstrate that child-centric, blanket, and revalidation approaches are not confined to one region or community of nations with a common colonial history or language.

From 2006 until 2010 we estimate at least twenty-four new laws or legal code revisions were undertaken by sub-Saharan nations.<sup>153</sup> Every part of sub-Saharan Africa was swept up in the clamor for new law. Countries with vastly different legal traditions and European colonial legal heritage—from Djibouti to Kenya and Mozambique—found common cause in and common pressure to pass anti-trafficking laws.<sup>154</sup> By 2010, a supermajority of forty-five sub-Saharan African nations had provided some capacity of anti-trafficking statutory protection. While several new laws are still in the pipeline, a considerable drop off in 2011 is assured by the simple fact that most African nations appear to have now met minimum USDOS requirements.<sup>155</sup> Indeed, there is evidence emerging that a new stage is

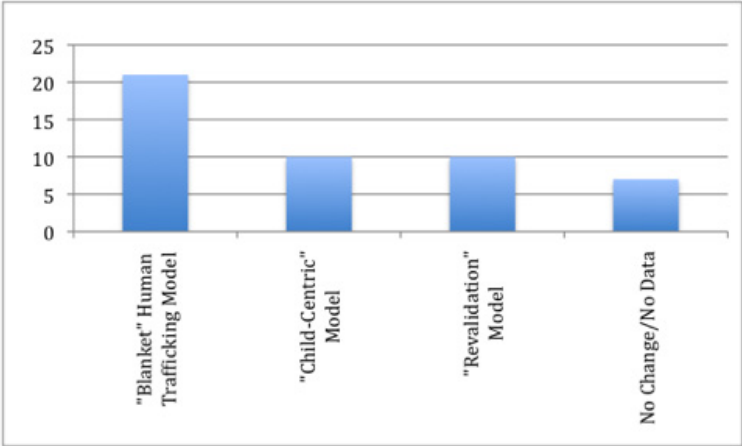
unfolding in the neo-abolitionist trend, namely the revision and/or enhancement of new laws: Burkina Faso, South Africa, Mauritius, Nigeria, and others have passed or announced, updated or expanded laws.<sup>156</sup> Some, such as Ghana, amended laws after finding them ineffective or unenforceable.<sup>157</sup>

*C. A Preliminary Taxonomy of Anti-Trafficking Laws in Sub-Saharan Africa*

By 2010, the overwhelming majority of sub-Saharan African nations responded to the legislative challenge of the USDOS OMCTP. These responses fall into one of four categories. In the first group, the blanket human trafficking model, there exist laws such as that of Ghana, Mozambique, and South Africa, which established a wide legislative tool to encompass all forms of trafficking, including adults and organ theft. In the second group, the child-centric model, laws such as those of Togo, Benin, and Lesotho focus on children exclusively. In the third group, the revalidation model, we place countries such as Angola, Botswana, and Mali, which maintain they can combat trafficking through revisions of existing criminal codes and/or enhancements of existing legislative instruments. The fourth group comprises those nations who have taken no action, or for which there is no data.

The following two data sets, Chart Two and Table One, demonstrate respective placement in these four groups.

**Chart Two: Placement, by Group, of Sub-Saharan African Nations in a Preliminary Taxonomy of Anti-Trafficking Legislative Responses**



**Table One: Placement, by Country, of Sub-Saharan African Nations in a Preliminary Taxonomy of Anti-Trafficking Legislative Responses**

<b>“Blanket” Human Trafficking Model</b>	<b>“Child-centric” Model</b>	<b>“Revalidation” Model</b>	<b>No Change/ No Data</b>
Burundi	Benin	Angola	Cape Verde
Burkina Faso	Cameroon	Botswana	Comoros
Djibouti	Congo Republic	Central African Republic	Sao Tome e Principe
Equatorial Guinea	DR Congo	Chad	Seychelles
Gambia	Ethiopia	Cote d’Ivoire	Somalia
Ghana	Gabon	Guinea-Bissau	Western Sahara
Kenya	Guinea	Eritrea	Zimbabwe
Liberia	Lesotho	(Northern) Sudan	<b>n=7</b>
Mauritius	Malawi	Mali	
Mauritania	(Southern) Sudan	Niger	
Mozambique	<b>n=10</b>	<b>n=10</b>	
Namibia			
Nigeria			
Rwanda			
Senegal			
Sierra Leone			
South Africa (draft)			
Swaziland			
Tanzania			
Uganda			
Zambia			
<b>n=21</b>			



### 1. The “Blanket” Approach: *Human Trafficking Laws*

The first legislative model, the blanket approach, situates child trafficking within wider clandestine networks of human trafficking. The laws in this group, while addressing trafficking of both adults and children, frame the role of parents in complex and, at times, conflicting ways. Ghana’s Human Trafficking Act (Act 694) of 2005, Mozambique’s Lei No.6/2008, and South Africa’s draft 2010 Prevention and Combating of Trafficking in Persons Bill (B7-2010) are representative of this group of legislation. Each span several years of new human trafficking law in varied locales, demonstrates legislative innovation and the expanding interests of legislators, and addresses many regional concerns.

The blanket category currently holds the largest membership, and continues to expand. The newest additions are South Africa and Kenya. This approach – also embodied in laws from Nigeria (2003), Djibouti (2007), and Mauritius (2009) – has produced some surprising results. On the one hand, the blanket approach groups together all forms of trafficking—child, adult, and other (e.g., organ theft)—for the purposes of prosecutorial attention, and thus streamlines funding.<sup>158</sup> On the other hand, the lack of specific focus on children as trafficking subjects results in legal inconsistencies. For example, Nigeria’s Child Rights Act (2003) criminalizes child trafficking in only twenty of the thirty-six states where the act is operative.<sup>159</sup> Furthermore, states with blanket approaches devote significant enforcement support to aspects of trafficking, such as prostitution, that are unrepresented in the child victim pool. Such support is developed in compliance with foreign governmental initiatives to repatriate smuggled “illegal” migrants from, for example, the European Union and the United States.<sup>160</sup>

***a. Ghana***

The 2005 Ghana law elaborates a series of broadly applicable definitions pertaining to trafficking, which incorporates the parental role. Initially, human trafficking is defined as,

the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by (a) the use of threats, force or other forms of coercion, abduction, fraud or deception, the abuse of power or exploitation of vulnerability, or (b) giving or receiving payments and benefits to achieve consent.<sup>161</sup>

Exploitation is further defined as including, “at the minimum, induced prostitution and other forms of sexual exploitation, forced labor or services, slavery and practices similar to slavery, servitude or the removal of organs.”<sup>162</sup> Trafficking is then framed to include “placement for sale, bonded placement, placement as service where exploitation by someone else is the motivating factor.”<sup>163</sup> Finally, children are not mentioned until Clause one, Section 4, which articulates that:

Where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defense in prosecution under this Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.

Thus, the *actus reus* undergirding the Ghanaian prohibition on trafficking is constituted in multiple ways. This includes the specific criminalization of all behavior iterated in Article One.<sup>164</sup> Such individuals are subject to no less than five years imprisonment.<sup>165</sup>

Whereas the definition of trafficking includes the issue of coercion by parents, Clause 3, Section 1, restates the fact that simply being a parent of the trafficked victim does not preclude prosecution: “A person who provides another person for purposes of trafficking commits an offence even where the person is a parent.”<sup>166</sup> The law subsequently expands

prosecutable parties to include *accessories* to trafficking, which are defined as “intermediaries.”<sup>167</sup> An intermediary is “someone who participates in or is concerned with any aspect of trafficking” under the Act “who may or may not be known to the family of the trafficked person.”<sup>168</sup> The phrase “is concerned” is expanded to include “to send, take to, consent to the taking to or to receive at any place any person” and “to enter into an agreement whether written or oral” that results in trafficking.<sup>169</sup> Anyone “who uses” a trafficking victim is subject to the same punishment.<sup>170</sup> Moreover, the Ghana Act tenders an extraterritorial jurisdiction to all acts that “would have constituted the offence of trafficking.”<sup>171</sup> Notwithstanding the defined punishments, a judge is permitted to take special circumstances into consideration when determining sentences, presumably including, for example, a possible kinship relation between victim and perpetrator.<sup>172</sup>

Reporting mechanisms further transcend the child/parental divide. It is the duty of all Ghanaians to “inform the police” of incidents of trafficking.<sup>173</sup> Reporting to police “or other security services” may take place where the offender or victim lives, where the trafficking occurred, or where the victim is temporarily located.<sup>174</sup> Child victims of trafficking too may report, with assistance from friends.<sup>175</sup> Knowledge of trafficking *may* also be passed on to a number of government agents and agencies, including “reputable” NGOs.<sup>176</sup> A further series of articles explains the processes whereby trafficked persons are to be rescued, cared for temporarily, counseled, and their families traced.<sup>177</sup> The law specifically mandates that “the views of the trafficked person shall be taken into consideration,” and “rehabilitation” and related matters are all to be done “in the best interests of the child.”<sup>178</sup> A 2006 amendment to the 2005 Act corrected an error with respect to the definition of exploitation that had rendered the original act unenforceable.<sup>179</sup>

***b. Mozambique***

Where Ghana featured a parent-child distinction in its act, Mozambique's law focuses on an inclusion of women. Mozambique's Lei No.6/2008 is entitled a comprehensive human trafficking act, and the language employed embraces the Palermo Protocols' emphasis on the vulnerability of women and children. While the definition of the criminal act of trafficking (but not the punishment to accompany it) in Article 10 conforms to some evolving standards in international law, the act of trafficking is separated from the conveyance and transportation of victims, which appears in Article 13.<sup>180</sup> Article 2 of the law describes its objective as "the establishment of a juridical regime applicable to the prevention and combating of trafficking in persons, and in particular women and children." Article 5 describes a series of "aggravating circumstances" whereby additional penalties are incurred, including but not limited to, trafficking actions affecting children, women, and individuals under eighteen years of age. Additional aggravating circumstances include the perpetrator being an educator, religious official, or state or public official.

Further distinguishing it from Ghana's law, Mozambique's places particular emphasis on the contexts whereby trafficking of and exploitation of children may originate within the wider context of human trafficking. For example, Article 12 outlaws the adoption of children when the outcome is child prostitution, and Article 11 adds language about pornography and sexual exploitation that does not feature in many human trafficking laws. It also criminalizes a variety of issues pertinent to trafficking, but rarely addressed in trafficking laws, including the seizure and destruction of travel documents of victims by traffickers.<sup>181</sup> Article 24 provides for the permanent residency of trafficking victims who aid in the prosecution of traffickers. Perhaps the most innovative element in the law is Article 15 concerning the "publicity and promotion of trafficking," whereby anyone disseminating materials or advertizing the trafficking of individuals by any means, including "the internet" (*incluindo o uso de tecnologia de*

*informação e a internet* [emphasis in original]), is subject to criminal sanction and possible imprisonment. Trafficking actions by relatives of any degree (*por parente de qualquer grau na linha recta*), blood relations, and anyone entrusted with the role of guardian for a minor, are singled out for particular attention.<sup>182</sup> Article 8 makes reporting any trafficking actions the responsibility of all citizens.

### ***c. South Africa***

South Africa's draft bill describes trafficking and anti-trafficking action with greater precision vis-à-vis the criminal justice system.<sup>183</sup> We include a draft because South Africa plays a prominent role in anti-trafficking, and the content of the bill is still under scrutiny and subject to revision. The definition of trafficking adopted is verbatim to that which appears in the Palermo Protocols.<sup>184</sup> In contrast with Ghana, South Africa's law of 2010 specifically refers to the international obligations entered into when the state became a signatory to the Palermo Protocols.<sup>185</sup>

With the likely imminent passage of the bill, South Africa will move from a child-centric to a blanket approach. This shift is clearest with respect to parental responsibility for trafficking of children in Chapter 9, Clause 34, entitled, "Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child," which discusses the parental role clearly.

34. (1) If a children's court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child, the court may—(a) suspend all the parental responsibilities and rights of that parent, guardian or other person; and (b) place that child in temporary safe care, pending an inquiry by a children's court. (2) Any action taken by a children's court in terms of subsection (1) does not exclude a person's liability for committing the offence of trafficking in persons . . . .<sup>186</sup>

The law also contains an elucidation of the purpose of the clause, under definitions. The purpose of clause 34 is explained as follows:

if a children's court has reason to believe that a parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child has trafficked the child, the court may suspend such rights and responsibilities and place the child in temporary safe care, pending a children's court inquiry. This, however, does not exclude that person's liability for committing the offence of trafficking in persons.<sup>187</sup>

A 2008 magistrate's decision suggests that until 2010, the law with regard to parental responsibility was unclear.<sup>188</sup> However, Clause 34 is identical to Chapter 18, Clause 287 of the 2005 South African Children's Act, except insofar as the entire matter is from its initial prosecution the remit of a Children's Court.<sup>189</sup>

## **2. The Child-Centric Approach: Restricting Criminality to Acts Perpetrated Against Minors**

The second legislative model, a "child-centric" law, prevails in ten nations, and the laws of Togo, Benin, and Lesotho are broadly emblematic, because the laws either focus exclusively on child trafficking (Togo and Benin) or implement domestic reforms required by international obligations emanating from the ratification of the International Convention of the Rights of the Child (Lesotho). As shown above in Chart Two and Table One, Gabon and Cameroon are included in this group because their prohibitions specifically on *child* trafficking and slavery, in 2004 and 2005 respectively, were complemented by the expansion of existing criminal codes.<sup>190</sup> This narrower approach delinks children from adult trafficking networks with a variety of consequences. By 2010 each state in this second child-centric group reported investigations and prosecutions, so there is little ground to believe the laws were ineffective.

Our preliminary analysis of laws in this group suggests that this may accurately be described as a transitional stage. The child-centric group

currently is comprised primarily of francophone countries because many anglophone and fewer francophone countries expanded their initial child-centric laws to encompass a blanket approach.<sup>191</sup> For example, Gambia and South Africa previously passed laws on children's rights in 2005, which enshrined the International Convention on the Rights of the Children into domestic law, and included provisions prohibiting trafficking. Yet by way of a 2007 law in Gambia and a 2010 draft bill in South Africa, the law expanded to include all forms of human trafficking; and, at least in South Africa's draft law, the language employed was more or less identical to the 2005 text.

**a. Togo**

The 2005 Togo law "with respect to the traffic in children in Togo," is divided into five chapters covering generalities, definitions, prevention, penalties, and miscellany.<sup>192</sup> Perhaps, because the law is not concerned with other forms of trafficking, the text is brief.<sup>193</sup> The law is specifically defined to address only trafficking in children, and the purpose of the law is explained as "the definition, prevention and suppression of the trade in children in Togo."<sup>194</sup>

The law in Togo defines trafficking in children by focusing on the age of the individual, the process of movement or displacement, and the type of exploitation. Following emerging international standards, a child is defined as one younger than eighteen years old.<sup>195</sup> Trafficking in children is viewed as "a serious infraction" which is defined "as the process whereby a child is recruited or kidnapped, transported, transferred, housed or accommodated," within the interior of the country or externally to the national territory, "by one or more people with the purpose of exploitation."<sup>196</sup> Exploitation in turn is defined as "all activities which provide to the child no economic, moral, mental or physical benefit but which by contrast, deliver to the trafficker or other individuals, either directly or indirectly, economic, moral or physical benefits."<sup>197</sup> The trafficker (*auteur du trafic*) is described as "any individual

who performs at least one of the acts enumerated" in the previous article.<sup>198</sup> A further provision elaborates a series of individuals who are considered accomplices to the offences, including those who provide "information or instructions"; those who procure "tools, weapons, transport or other means" to support, aid, or abet traffickers; and, those who assist in the preparation, facilitation or consumption of the criminal acts of trafficking.<sup>199</sup>

The 2005 law mandates both general and specific responsibilities for the state with respect to the prevention of trafficking.<sup>200</sup> The final article of the section on protection lays out the mechanism whereby a child, unaccompanied by parent(s) or guardian(s), may be permitted to leave the country; it provides for a special authorization, the details of which are to be elaborated by the Council of Ministers.<sup>201</sup> The 2005 law also says that all "measures adopted must guarantee the superior interests of the child and respect his/her dignity."<sup>202</sup>

The largest chapter of the law defines "sanctions" or punishments. Traffickers and their accomplices, as well as those attempting to traffic, are subject to prison sentences of between two and five years, and/or a fine between one and five million francs, "regardless of the point of departure or destination of the children."<sup>203</sup> A series of enhancements resulting in imprisonment of five to ten years, and a fine of five million to ten million francs, exist in certain circumstances, including:

1. If the child is below the age of fifteen at the time of the crime;
2. If the act committed is accompanied by violence;
3. If the trafficker uses drugs (*stupéfiant*) that affect the capacity of the victim;
4. If the trafficker uses weapons or carries a conceal weapon;
5. If the victim is hidden or displayed in a public or private place;
6. If the act of trafficking causes the child physical, mental, or moral damage or other repercussions requiring medical attention;
7. If the trafficking is part of an organized or group activity;



8. If the child is subjected to the worst forms of labor;
9. In the event that the trafficker is a recidivist.<sup>204</sup>

Parents are subject to lesser punishments (six months to a year in prison or probation up to three years) if they knowingly facilitate the trafficking of their child or one under their guardianship.<sup>205</sup>

***b. Benin***

The 2006 Benin law, subtitled a law “with respect to the conditions whereby children are moved, and for the suppression of the trade in children,” has as its “object” the “determination of the conditions under which children are moved and the elimination of the traffic in children” within the republic.<sup>206</sup> The law is divided into four chapters: generalities and definitions, a description of the conditions under which children are trafficked within Benin and beyond its borders, administrative and penal disposition, and miscellany. The text of the first chapter precisely defines what constitutes child trafficking by detailing several key factors present in child trafficking. For example, it defines “children” as those under eighteen years old.<sup>207</sup> A “trafficker” is defined as an individual performing an act for the purpose of alienating “the liberty or person of a child, whether gratuitously or for personal financial gain.”<sup>208</sup> Such acts of alienation may include the recruitment, transportation, transfer, placement, or harboring of children, “regardless of the ultimate particularities of the method of exploitation.”<sup>209</sup>

The concept of “exploitation” in the 2006 Benin law is further elaborated to include, but is not limited to:

- all forms of slavery or analogous practices, debt bondage, and servitude such as forced labor, the use of children in armed conflict, or for the purposes of organ transplant;

- the offering up or procurement of a child for the purposes of prostitution and the production of pornographic materials and films;
- the offering up or procurement of a child for the purpose of criminal activities;
- any work, which by its nature and/or conditions, may endanger the health, security, or morality of a child or delivering a child into any such circumstances.<sup>210</sup>

The concluding articles of the opening section state unequivocally that child trafficking and all forms of child labor are illegal in Benin, except for those permitted under international law.<sup>211</sup>

An important section of the law describes several contexts in which child trafficking operates. This section includes: the types of acts whereby a child would be considered trafficked within and outside the country, the forms of movement of a child within the country, and the unauthorized separation of a child from a biological parent (or a person with designated "authority").<sup>212</sup> This special authorization must be "delivered by the competent administrative authority in the child's place of residence."<sup>213</sup> The law also states that no one is permitted to receive a child without assurance that such an authorization exists.<sup>214</sup> Further, anyone other than the biological parents who receives a child must report the child's arrival within seventy-two hours, and is subject to penalties described in the same law. With the exception of war and natural disaster, no foreign child may enter Benin unless accompanied by a biological parent or a guardian. Additionally, the child must be in possession of an identity document and documentation about the destination and purpose of the voyage.<sup>215</sup> Restrictions on the movement of Beninese children beyond the limits of the republic are similar to entry constraints. Any parent or guardian seeking to remove a child must be in possession of a dossier consisting of the place of origin, the

destination, the purpose of the movement, and the identity of the individuals or establishment that will receive the child.<sup>216</sup>

Like Togo's, Benin's law also foregrounds prosecution and punishment. Any child found in a situation that violates the terms laid out above (as a result of the action—*à l'insu*—of parent or guardian) may be returned to his or her parents or an institution of protection.<sup>217</sup> Anyone found to be, "moving, attempting to move, or accompanying," a child without the appropriate identifying documents, regardless of destination, is subject to punishment if it can be "established that the child is a victim of trafficking and the transporter took the child deliberately."<sup>218</sup> The law is exceptionally tough on coercion by parents: mothers or fathers who knowingly relinquish their child into the custody of a "trafficker" can face between six months and five years imprisonment.<sup>219</sup> Any individual involved in the domestic movement or "attempted" movement of a child who has not followed the protocols stipulated by the law faces between one and three years imprisonment and a fine between 50,000 and 500,000 CFA.<sup>220</sup> Similarly, individuals, regardless of nationality, involved in removing a child from the territory of the republic are subject to a sentence of two to five years and a fine of 500,000 to 2,500,000 CFA.<sup>221</sup> Furthermore, anyone failing to convey knowledge of the trafficking of a child is also punishable by a fine.<sup>222</sup> The law makes a crucial distinction, however, between those who, "move or attempt to move," and those who "deliver into the trade" a child, whereby the latter face between ten and twenty years imprisonment.<sup>223</sup>

Benin's law then reiterates a series of circumstances that result in a sentencing enhancement, often life behind bars.<sup>224</sup> These circumstances include that "if the child is not recovered prior to sentencing or is recovered deceased"<sup>225</sup> a sentencing enhancement will be added. Recidivism results in the doubling of the punishments reiterated in articles 16–21.<sup>226</sup> Additional criminalized activities include knowingly "employing" a child who originated in the trade, threats or use of force, "other forms of constraint," abduction, fraud, deception, and "abuse of authority."<sup>227</sup> Other acts

constituting aggravation of child trafficking include: violence, deprivation, incitement to debauchery or mendacity, public indecency, offering or accepting payment or benefits, or consent to exploit a child.<sup>228</sup> To underscore the severity of the proscriptions, Articles 26 and 27 state: first, “the attempt to commit any of the infractions previewed in the present law is subject to the same punishment as if the crime were committed,” and, second, “accomplices” will be punished in the same way as “authors” of the criminal acts.<sup>229</sup>

***c. Lesotho***

Lesotho’s 2004 Children’s Protection and Welfare Bill is one of only three anglophone laws currently falling within the “child-centric” category. Until quite recently this was a more numerous group, but the cascade of new laws and the pressure on nations to upgrade “child-centric” laws to “blanket” approaches has diminished the group. The full title of Lesotho’s 2004 Act was a law, “to consolidate and reform the laws relating to the protection and welfare of children and to provide for incidental matters.”<sup>230</sup> While the law incorporates concrete language criminalizing child trafficking, its stated objective is “to extend, promote and protect the rights of children as defined in the 1989 UN Convention on the Rights of the Child, the 1990 African Charter on the Rights and Welfare of the Child, and other international instruments, protocols, standards and rules on the protection and welfare of children to which Lesotho is signatory.”<sup>231</sup> The definition of child trafficking is consistent with the Palermo Protocol as it pertains to children.<sup>232</sup>

Uniquely, Lesotho’s child trafficking prohibition is preceded by a prohibition on exploitative child labor.<sup>233</sup> Lesotho’s law criminalizing child trafficking is framed more generally than the laws of Togo and Benin, insofar as Article 22(n) identifies as a responsibility of the state to “make every effort to prevent the sale, trafficking, and abduction of children.” The State’s responsibility notwithstanding, Lesotho describes child trafficking in

much broader terms than that in any other child-centric law current or superseded. Child trafficking is collapsed with child abduction, but the acts and punishment referenced by the, “unlawful transfer of possession, custody or control of child”<sup>234</sup> are several:

1. Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration, commits an offence and shall on conviction be liable to imprisonment for a term not less than twenty years;
2. Any person who without lawful authority or excuse harbours or has in his/her possession, custody or control a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any person within or outside Lesotho, commits an offence and shall on conviction be liable to imprisonment for a term not less than twenty years;
3. For the purposes of subsection (2), if any person harbours or has in his/her possession, custody or control a child without lawful authority or excuse, the child shall, until the contrary is proved, be presumed to be a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration.<sup>235</sup>

Though the above definition of trafficking includes the transference of children, a subsequent Article provides a unique subcategory of crime—namely “trafficking of child by false pretences.”<sup>236</sup> Here, fraud, deceit, and false pretense provide exacerbating circumstances and additional prison time not present in other “child-centric” laws.<sup>237</sup> The origin of this distinct subcategory is unclear, but it appears to be derived from a set of overlapping concerns originating with child abduction and extended to include trafficking. Lesotho’s law is thus emblematic of the group of states prohibiting child trafficking within the context of much broader child

protection laws. Lesotho's law attempts to regulate parental involvement in child trafficking, but also provides for a defense.<sup>238</sup>

### **3. Revalidation**

The third legislative model, one of "revalidation," is predicated on the idea that existing laws provide adequate infrastructure for a remedy. This means that the relevant criminal codes, labor laws, or employment laws need only be revised and updated to incorporate changing circumstances. No one state's laws are emblematic of this model because this group consists of states that appear to contend that *domestic* laws adequately provide for the prosecution of traffickers. The "revalidation" group of nations is small and continues to diminish in membership. For example, Côte d'Ivoire's penal code imposes imprisonment and fines for the following prohibited acts: forced labor,<sup>239</sup> entering into contracts that deny freedom to a third person,<sup>240</sup> and recruiting or offering children for prostitution.<sup>241</sup> Additionally, the military code prohibits child conscription,<sup>242</sup> and Mali has similar, if not identical, articles of prohibition in the 1973 revision of its criminal code.<sup>243</sup>

This "revalidation" group is small, and its membership is rapidly shifting as the legislative trend is increasingly used across the continent. For example, Rwanda uses existing penal and labor code statutes to prosecute traffickers variously for slavery, forced labor, forced prostitution, and child prostitution. However, a recent law has criminalized trafficking explicitly, and upon implementation Rwanda will move to the "blanket" group. Similarly, until December 2009 Kenya was previously a party, but with the passage of the Counter-Trafficking in Persons Bill of 2010, it too moved into the "blanket" group. Until 2009, Malawi prosecuted traffickers through its Employment Act and its Penal Code. But with the recent passage of its Child Care, Protection and Justice Act, Malawi has moved into the "child-centric" category.

The revalidation category contains states with complex political conflicts and quixotic legislative tendencies, including countries torn apart by civil war, all with backlogged and stalled anti-trafficking legislation. For example, although Côte d'Ivoire has not passed a domestic anti-trafficking law, it has entered into a bilateral child trafficking treaty with neighboring Mali.<sup>244</sup> Furthermore, the 2009 TIP report observed, "increased efforts to address trafficking through . . . enforcement" of existing law, and noted that legislation pending would, if passed by the national assembly and signed into law, propel it out of the "revalidation group."<sup>245</sup>

The revalidation group contains a number of states whose legislative vehicles are either anchored in former colonial rule, or actually consist of the vestiges of colonial law. But the fact that colonial laws feature prominently and continue to be enforced underscores that this third revalidation group is active with regard to anti-trafficking. For example, Guinea Bissau currently only criminalizes forced labor under Article 37 of its colonial Penal Code, but it recently began drafting a child trafficking bill. This shows that these countries are not legislatively moribund or close to failure. Instead, while each country in the third group reported investigations and prosecutions to the USDOS, many states continue to revise their statutes. Other countries, such as Niger, have recently revitalized existing laws. For example, Niger's penal code prohibits procurement of a child for prostitution and slavery via a 2003 amendment, and forced and compulsory labor through its Labor Code.<sup>246</sup>

#### IV. THE FUTURE OF ANTI-TRAFFICKING ENFORCEMENT AND THE NEO-ABOLITIONIST TREND

By 2010, the legislatures of the supermajority of African republics promulgated new legislation to combat and outlaw trafficking in either "humans" or "children."<sup>247</sup> These individual laws were the culmination of years of research and lobbying by domestic and international anti-trafficking constituencies, including children's and women's advocates,

legislators and legal activists, and a decade-long campaign. These laws focused on children, domestic violence, and women's rights by criminalizing specific practices associated with the illegal labor and movement of individuals, and by penalizing noncompliance in a variety of ways.<sup>248</sup> The laws provide specific articles to discourage offenders and inducements to incentivize compliance.

The process of drafting laws is consultative and deliberative and draws on different sources within a nation and beyond for how to deal legislatively with specific issues. While laws are the products of each individual nation, the simultaneous introduction of anti-trafficking legislation in multiple African national assemblies was not coincidental. Anti-trafficking laws unfolded swiftly across Africa in the new millennium, but it would be far too simplistic to interpret this development as yet another manifestation of US imperialism. While the US Agency for International Development (USAID) routinely sponsors legislative drafting training in Africa and disseminates draft anti-trafficking statutes to national legislative drafters, African nations drew on a rich history and a variety of sources for inspiration.

Evidence for a stampede to new law is abundant, but it would be a gross mischaracterization to see the avalanche of legislative remedies as without precedent. When viewed from a distance, it is apparent that sub-Saharan Africa is experiencing only the latest legislative trend in a series of historical trends of abolition. An analysis of the contemporary neo-abolitionist trend reveals three categories of legislative responses to trafficking. By identifying the current trend as only the most recent iteration of a long-standing tradition, predictions about the future of anti-trafficking in the region can be made.



*A. Five Predictions About the Efficacy of the Current Neo-Abolitionist Trend*

First, although on the surface nations appear to be acting independently and responding on a domestic basis to the challenges presented by trafficking—and not by means of a continental coordinated effort—the variation among the responses is minimal. Our analysis identifies only three types of state responses to the perception that trafficking is a new and/or growing problem. These three categories of legislative remedy are identifiable by their respective definitions of trafficking and their stated objectives. Members of the “blanket” group are attempting to ban all forms of trafficking and deploy the most expansive definitions. The “child-centric” group is concerned exclusively with criminalizing child trafficking. And the “revalidation” group appears to hold the view that there is no legitimate basis for new law because existing law provides adequate protection.

Second, notwithstanding the fact that state and nonstate actors repeatedly reinforce the notion that trafficking is a new and growing problem, African national responses to trafficking are remarkably consistent and predictable. Where nations respond domestically with the passage of new laws, the description of the problem and the imagined remedy are very similar. This suggests the distinct possibility that although national legislatures take their responsibility to address the issue seriously, they are simultaneously—possibly unwittingly—acknowledging that a regional or transnational response may be more appropriate, if not more effective.

Third, historical analysis of the legislative trend and our taxonomy of anti-trafficking legislation together suggest that the volatility in the group membership in the current neo-abolitionist trend is part of a larger historical process. The fluidity between the three groups suggests that, just as all participating nations eventually abolished the trans-Atlantic slave trade in the nineteenth century, over time all African nations will adopt the “blanket” approach.

While it is beyond the scope of this article to explore precisely why any particular nation may abandon its commitment to either a “child-centric” or “revalidation” model, there is circumstantial evidence that suggests some early laws were the product of hasty action. For example, with respect to the blanket approach, almost immediately upon passage of the new human trafficking law, both Ghana and Nigeria began drafting amendments. Prosecutors complained that poorly written definitions did not provide the leverage to guarantee convictions. For its part, the “child-centric” approach is a highly transitory stage. As soon as prosecutors in Burkina Faso, South Africa, and Gambia become familiar with the first law, the legislators redefined trafficking to include adults. Similarly, the basis for the third “revalidation” group underscores its inherent instability and mutability. It comprises states with a Janus-faced legislative policy: they simultaneously insist that their current domestic legal apparatus is satisfactory, while also promulgating revisions of criminal codes, labor laws, and employment laws, or entirely new, sweeping anti-trafficking laws.

Finally, we predict that the relative stability (or instability) of the three taxonomies may be tied to how each grapples with a core problem present in all states. There are a number of core or common issues, and by exploring how different laws in each of the three taxonomies grapple with the criminalization of the same core or common issues, the third prediction above (that the blanket law is an inevitable outcome throughout Africa), may be tested.

One such common issue is parental consent and coercion. In a subsequent article we propose to examine specific legal provisions for parental consent and coercion. Because the issue of parental involvement is central to contemporary state and nonstate interest in child trafficking, an analysis of the relative enforceability of specific statutes as they pertain to parental consent and coercion will speak directly to the stability of the taxonomy that is unfolding. If parental consent and coercion are adequately described and the respective laws are enforceable, the three-part taxonomy will

continue to exist. Alternatively, if the respective articles are found to be weak and/or unenforceable, African nations will continue to promulgate more expansive anti-trafficking legislation and thus further inform this preliminary taxonomy.

*B. Testing the Stability of the Preliminary Anti-Trafficking Taxonomy:  
Parental Consent and Coercion*

The centrality of parental consent and coercion in evolving legislative responses to trafficking is becoming increasingly clear to legislators and social justice activists alike.<sup>249</sup> We have observed that it already features in some new laws, including those of Ghana, South Africa, Benin, and Lesotho. Because parental consent and coercion are common concerns throughout sub-Saharan Africa, it may provide a clue to the stability of the emerging taxonomy. The following victim interview is offered to illustrate further research direction with regard to the core criminal issues in child trafficking.

The April 2003 Human Rights Watch (HRW) report, “Togo: Borderline Slavery,” contained an unusual juxtaposition of interviews between a trafficking victim and several anti-trafficking practitioners from Togo. Ten-year-old Kéméyao A. made the following statement:

There was a woman who came to the market to buy charcoal. She found me and told my mother about a woman in Lomé who was looking for a girl like me to stay with her and do domestic work. She came to my mother, and my mother gave me away. The woman gave my mother some money, but I don’t know how much.<sup>250</sup>

Kéméyao identified a direct relationship of complicity between the trafficking agent and her mother. However, among Togo’s anti-trafficking activists, attitudes differ on how to address parental responsibility.<sup>251</sup>

Over the objections of the committee’s president, Judge Emanuel Edoth, the drafting committee of Togo’s Children’s Code included expansive

criminalization of parental roles in the draft legislation. Eдорh told HRW that while nearly everyone on the committee, including NGO members, wanted to strongly penalize parents who contributed to the trafficking of children, he disagreed:

[I]t does not further the rights of the child to violate human rights [of parents] in this way. . . . If a father takes a risk with his child, we know he's committed an infraction and has to be punished. But where I part with my fellow committee members is whether such a parent should be imprisoned for six years. The punishment should be six months to a year, not six years.<sup>252</sup>

Judge Eдорh's view was shared by Togo's Minister of Women's Affairs, Suzanne Aho. She expressed concern about how the "punishment of parents . . . might affect children."<sup>253</sup> She explained that "children are also stigmatized when they have a parent in prison."<sup>254</sup>

Although many Togolese anti-trafficking activists and NGOs supported strong penalties for parents, HRW failed to support these goals and endorsed only limited provisions on parental complicity. HRW couched its position in the language of the UN Convention of the Rights of the Child, which states that the "best interests of the child" should guide policymakers.<sup>255</sup> HRW called for, "an explicit defense for parents who are genuinely deceived about the purpose of their child's recruitment, believing it to be educational or otherwise non-exploitative."<sup>256</sup> HRW further endorsed, "reduced penalties for parents who reasonably but mistakenly believe that aiding and abetting child trafficking, or failing to report child traffickers to the police, is in their child's best interests."<sup>257</sup>

## V. CONCLUSION

As the preliminary nature of this analysis allows us only to lay the groundwork for further study, we do not yet offer policy proposals to the myriad of problems raised in this article. However, we suggest that certain common difficulties faced by sub-Saharan nations grappling with domestic

and cross-border trafficking can be ameliorated. This would require states to expand data-gathering operations, increase capacity in internal investigations and prosecutions, and institute regular region-wide agency cooperation procedures.

#### *A. Resolving Lack of Implementation*

As in the case of Mauritania, numerous sub-Saharan nations have passed anti-trafficking laws that have not been implemented. This defeats anti-trafficking efforts, because the impetus to establish social change generally dissipates after the passage because activists assume that the goal has been reached. The laws thus serve to cap investigation of the very problem they purport to solve.

Any solution to this lack of implementation would require increased data-gathering on the incidence and nature of local forms of trafficking and on the status of investigations and prosecutions under the law. Relevant ministries should be directed to detail the steps taken to implement the nation's anti-trafficking law and should submit such reports at least annually to the nation's legislature to allow for longitudinal study of the law's effectiveness.

Effective implementation would also require the relevant ministries to build a corps of investigators trained in interviewing victims and gathering evidence and a similar corps of lawyers capable of presenting such evidence to the courts. Because these prosecutions often require the development of evidence less tangible than is the norm in more common crimes (such as property, theft, or murder), professionalizing and training these officials becomes imperative if anti-trafficking laws are to have any impact at all.

#### *B. Resolving Lack of Cross-Border Cooperation*

Increased data-gathering would further serve as a basic tool in building connections between nations' anti-trafficking agencies. As we have observed above, the paucity of *regional* and cross-border information on

trafficking hampers any rigorous analysis of these crimes. Also, the intra-country focus of existing data prevents standardization and open communication between nations, creating obstacles to regional cooperation in enforcement.

Beyond the removal of communication barriers, a solution to the lack of cooperation between sub-Saharan nations requires the permanent institution of data-sharing and the establishment of regular conferencing at the investigative level. We note that many of the laws described herein require interaction between nations at the ministerial level, perhaps to signify the importance of the laws. However, the resulting intermittent high-level meetings cannot fulfill the need for regular communication that is the cornerstone of any cooperative effort.

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<sup>1</sup> See, e.g., ANTHONY M. DEStEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* (2007); KIMBERLY A. MCCABE, *THE TRAFFICKING OF PERSONS: NATIONAL AND INTERNATIONAL RESPONSES* (2008); CHRISTAL MOREHOUSE, *COMBATING HUMAN TRAFFICKING: POLICY GAPS AND HIDDEN POLITICAL AGENDAS IN THE USA AND GERMANY* (2009); ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* (2010).

<sup>2</sup> See US DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 8* (2d ed. 2002) [HEREINAFTER 2002 TRAFFICKING IN PERSONS REPORT].

[T]he report panel placed each of the countries that are included on the report into one of the three lists, described here as tiers, . . . . This placement is based upon governments' efforts to combat trafficking. In accordance with the Act, countries whose governments fully comply with . . . minimum standards for the elimination of trafficking were placed in Tier 1. Countries whose governments do not fully comply with those standards were placed in Tier 2 if they are making "significant efforts to bring themselves into compliance" with the standards, or in Tier 3 if they are not. Each tier encompasses a wide range of countries. *Id.*

According to the Act, beginning with the 2003 report, countries in Tier 3 will be subject to certain sanctions, principally termination of nonhumanitarian, non-trade-related assistance. Consistent with the Act, such countries also would face US opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions, specifically the International Monetary Fund and multilateral

development banks such as the World Bank. All or part of the bilateral and multilateral assistance sanctions may be waived upon a determination by the President that the provision of such assistance to the country would promote the purposes of the Act or is otherwise in the national interest of the United States. The Act provides that the President shall waive those sanctions when necessary to avoid significant adverse effects on vulnerable populations, including women and children. *Id.* at 10

<sup>3</sup> US DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 25–32 (9th ed. 2009) [hereinafter 2009 TRAFFICKING IN PERSONS REPORT].

<sup>4</sup> *See id.* at 51.

<sup>5</sup> *See generally* US DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 40 (4th ed. 2004) [hereinafter 2004 TRAFFICKING IN PERSONS REPORT]; US DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 43–48 (5th ed. 2005) [hereinafter 2005 TRAFFICKING IN PERSONS REPORT] (maps); US DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 47–52 (6th ed. 2006) [hereinafter 2006 TRAFFICKING IN PERSONS REPORT]; US DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 45–50 (7th ed. 2007) [hereinafter 2007 TRAFFICKING IN PERSONS REPORT]; US DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 45–50 (8th ed. 2008) [hereinafter 2008 TRAFFICKING IN PERSONS REPORT]; 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 51–56.

<sup>6</sup> Of the various editions of the Trafficking in Persons Report, only the fourth edition organized data by “region.” This approach was abandoned in 2005 and “regional” maps have since been adopted. From 2010, the US Department of State provided a digital interactive map. See <http://www.state.gov/g/tip/rls/tiprpt/2010/138377.htm>.

<sup>7</sup> *See* 2006 TRAFFICKING IN PERSONS REPORT, *supra* note 5, at 36.

The Trafficking Victims Reauthorization Act (TVPRA) of 2003 added to the original law a new requirement: that foreign governments provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to be considered in full compliance with the TVPA's minimum standards for the elimination of trafficking (Tier 1). The 2004 TIP Report collected this data for the first time. The requirement is fully effective starting with this report. *Id.*

<sup>8</sup> For example, an expansive literature critiques anti-trafficking as “moral panic.” *See, e.g.,* K. Kempadoo, *Introduction to TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS*, vii (K. Kempadoo et al. eds., 2005); Gretchen Soderlund, *Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition*, 17 NAT'L WOMEN STUD. ASS'N J. 67 (2005) (analyzing recent developments in US anti-sex trafficking rhetoric and practices); M. C. Desyllas, *A Critique of the Global Trafficking Discourse and U.S. Policy*, 34.4 J. SOC. & SOC. WELFARE 57 (2007) (examining the discourse of US policy to address trafficking globally); Jo Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, in *GLOBAL SEX WORKERS: RIGHTS, RESISTANCE AND REDEFINITION* 34 (Kamala Kempadoo & Jo Doezema eds., 1998) (discussing the differences between voluntary prostitution and forced prostitution); Jo Doezema,

*Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking of Women*, 18 GENDER ISSUES 23 (2000) (comparing current concerns about "trafficking in women" with turn of the century discourses about "white slavery"); Wendy Chapkis, *Soft Glove, Punishing Fist: The Trafficking Victims Protection Act of 2000*, in REGULATING SEX: THE POLITICS OF INTIMACY AND IDENTITY 51 (Elizabeth Bernstein & Laurie Schaffner eds., 2005) (discussing the US Trafficking Victims Protection Act); Jo Doezema, *Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation*, 14.61 SOC. & LEGAL STUD. 61 (2005) (examining the role played by sex workers in debates leading to the signing of the UN Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children); Jo Doezema, *Ouch! Western Feminists' 'Wounded Attachment' to the 'Third World Prostitute'*, 67 FEMINIST REV. 16 (2001) (arguing that that the injured body of the third world trafficking victim in international feminist debates around trafficking in women serves as a powerful metaphor for advancing certain feminist interests, which cannot be assumed to be those of third world sex workers themselves).

<sup>9</sup> For reinvention, see DAVID BRION DAVIS, *INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD* (2006); Joseph Miller, *Retention, Re-Invention, and Remembering: Restoring Identities Through Enslavement in Africa and Under Slavery in Brazil*, in ENSLAVING CONNECTIONS: CHANGING CULTURES OF AFRICA AND BRAZIL DURING THE ERA OF SLAVERY 81–121 (José C. Curto & Paul E. Lovejoy eds., 2003). For a preabolition narrative, see Ilona Vernez Johnson, *The Reinvention of Slavery in France: From the Jean Boucaux Affair to the Eve of the Haitian Revolution* (1998) (unpublished Ph.D. dissertation, Pennsylvania State University).

<sup>10</sup> By way of clarification, "colonial" in this sense refers to the creation, by colonial powers, of individual entities, which become nation-states. It is to be distinguished from the broad strokes of colonialism throughout sub-Saharan Africa whereby European nations colonized expansive swathes of future sub-Saharan territories.

<sup>11</sup> Here, we employ the phrase "legislative trend" to convey the idea of a broad, seemingly collaborative program of legal remedy concerned with a common problem, affecting multiple legal jurisdictions simultaneously or successively. An antislavery or anti-trafficking legislative trend addresses specific issues emerging from practices attendant to slavery, illicit attempts to circumvent antislavery/anti-trafficking action, and/or slave-like practices of labor coercion. We adopt the term "trend," as opposed to current, wave, or tide, or any number of more metaphorical terms, to avoid any implications of an action happening in concert or an action having a predetermined outcome. Cf. "legislative wave" see, Jonathan Macey & Hillary A. Sale, *Observations on the Role of Commodification, Independence, and Governance in the Accounting Industry*, 48 VILL. L. REV. 1167 (2003); Gabrielle Bouleau, *The WFD Dreams: Between Ecology and Economics*, 22 WATER & ENVTL. J. 235 (2008); Zhenzhi Guo, *Playing the Game by the Rules? Television Regulation Around China's Entry into WTO*, 10 J. EUROPEAN INST. COMM. & CULTURE 5 (2003), available at <http://www.javnostthepublic.org/media/datoteke/guo-4-2003.pdf>.

<sup>12</sup> We say "perceived" because there is inadequate data to state unequivocally that trafficking of humans in Africa is increasing. For discussion of the "flourishing" of the



trafficking (based on non-African data), see LOUISE SHELLEY, *HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE* (2010).

<sup>13</sup> For examples of this “on the ground,” see RICHARD ROBERTS, *LITIGANTS AND HOUSEHOLDS: AFRICAN DISPUTES AND COLONIAL COURTS IN THE FRENCH SOUDAN, 1895–1912* (2005).

<sup>14</sup> For the long history of resistance, see *LAW IN COLONIAL AFRICA* (Richard Roberts & Kristin Mann eds., 1991); *INTERMEDIARIES, INTERPRETERS, AND CLERKS: AFRICAN EMPLOYEES IN THE MAKING OF COLONIAL AFRICA* (Benjamin N. Lawrance et. al. eds., 2006).

<sup>15</sup> While data is absent for several countries, it would be inaccurate to cast any sub-Saharan nation as unresponsive from the standpoint of legislation.

<sup>16</sup> See *Slavery Lives on in Mauritania*, NPR (Aug. 28, 2001), <http://www.npr.org/programs/specials/racism/010828.mauritania.html>.

<sup>17</sup> See generally E. Ann McDougall, “*Living the Legacy of Slavery: Between Discourse and Reality*,” 45 *CAHIERS D’ÉTUDES AFRICAINES* 3/2005 (n° 179–180), p. 957 (2005).

<sup>18</sup> See *Mauritania still ‘practising slavery’*, BBC NEWS (Nov. 7, 2002, 6:29 PM), <http://news.bbc.co.uk/2/hi/africa/2415967.stm> (“There are three main ethnic communities in Mauritania: white Moors, who hold political power; black Moors or Haratins, generally considered to be descendants of slaves, and blacks who come from the south of the country...”).

<sup>19</sup> *Id.*

<sup>20</sup> See *Slavery in Mauritania*, ANTI-SLAVERY INTERNATIONAL TODAY, [http://www.antislavery.org/english/what\\_we\\_do/antislavery\\_international\\_today/award/2009\\_award\\_winner/slavery\\_in\\_mauritania.aspx](http://www.antislavery.org/english/what_we_do/antislavery_international_today/award/2009_award_winner/slavery_in_mauritania.aspx) (stating that not only are women and men are treated as property, but also children born to slave parents also become property) (last visited Mar. 8, 2011).

<sup>21</sup> *Mauritania: New Anti-slavery Law Not Enough for Real Change, Activists Say*, IRIN (Aug. 24, 2007), <http://www.irinnews.org/Report.aspx?ReportID=73936> (“Slavery has existed for centuries in Mauritania, a Sahelian country which falls geographically and culturally between Arab North Africa and black sub-Saharan Africa. The enslavement of the black Arabic speakers (Haratines) is not limited to the upper class white Moors (Berber-Arabs), but also exists among black Africans, mostly of the Halpulaar and Soninké ethnic groups.”). For “caste,” see also, US DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 230* (10th ed. 2010) [hereinafter 2010 *TRAFFICKING IN PERSONS REPORT*].

<sup>22</sup> Slavery has existed for centuries in Mauritania, a Sahelian country which falls geographically and culturally between Arab North Africa and black sub-Saharan Africa. The enslavement of the black Arabic speakers (Haratines) is not limited to the upper class white Moors (Berber-Arabs), but also exists among black Africans, mostly of the Halpulaar and Soninké ethnic groups.” *Mauritania: New anti-slavery law not enough for real change, activists say*, IRIN, Aug. 24, 2007, available at <http://www.irinnews.org/Report.aspx?ReportID=73936>. “A For “caste” see also, 2010 *TRAFFICKING IN PERSONS REPORT* supra note 21, at 230.

<sup>23</sup> James C. McCann, *Climate and Causation in African History*, 32 *INT’L J. AFR. HIST. STUD.* 261 (1999); GREGORY MADDOX, *SUB-SAHARAN AFRICA: AN ENVIRONMENTAL*

HISTORY 90 (2006). See generally Christophe Châtelot, *Anti-slavery Campaigner Arrested in Mauritania*, GUARDIAN, Jan. 4, 2011 (according to Fatima Mbaye, head of the Mauritanian Human Rights League, "[N] [under anti-slavery laws] . . .").

<sup>24</sup> See, e.g., Christophe Chatelot, *Anti-Slavery Campaigner Arrested in Mauritania*, GUARDIAN WKLY., Jan. 4, 2011, <http://www.guardian.co.uk/world/2011/jan/04/mauritania-slavery-campaigner-human-rights> ("A 2007 law made slavery illegal in Mauritania. 'But in fact no one has ever been sentenced. Charges are dropped because the courts are under constant pressure from traditional, religious and tribal forces, all of which tolerate this practice,' said Fatima Mbaye, head of the Mauritanian Human Rights League.").

<sup>25</sup> See *Fleeing Slavery in Africa*, WASH. TIMES, Feb. 12, 2004, <http://www.washingtontimes.com/news/2004/feb/12/20040212-121023-9272r/> ("On rare occasions, senior Mauritians concede slavery exists, but insist it is dying out.").

<sup>26</sup> See Pascale Harter, *Slavery: Mauritania's Best Kept Secret*, BBC NEWS, Dec. 12, 2004, <http://news.bbc.co.uk/2/hi/africa/4091579.stm>.

<sup>27</sup> Paul E. Lovejoy, *The Volume of the Atlantic Slave Trade: A Synthesis*, 23 J. AFR. HIST. 473 (1982); Paul E. Lovejoy, *The Impact of the Atlantic Slave Trade on Africa: A Review of the Literature*, 30 J. AFR. HIST. 365 (1989); The Trans-Atlantic Slave Trade Database, <http://www.slavevoyages.org/tast/index.faces> (last visited May 26, 2011).

<sup>28</sup> WILFRID BLUNT, *BLACK SUNRISE: THE LIFE AND TIMES OF MULAI ISMAIL, EMPEROR OF MOROCCO 1646–1727*, 46 (1951).

<sup>29</sup> For example, John Hunwick, *Islamic Financial Institutions: Theoretical Structures and Aspects of Their Application in Sub-Saharan Africa* in CREDIT, CURRENCIES, AND CULTURE: AFRICAN FINANCIAL INSTITUTIONS IN HISTORICAL PERSPECTIVE (Endre Stiansen and Jane Guyer, eds., 1999); John Hunwick, *Islamic Law and Polemics over Race and Slavery in North and West Africa (16th–19th Century)* in SLAVERY IN THE ISLAMIC MIDDLE EAST (S. Marmon, ed., 1999); JOHN HUNWICK & EVE TROUTT POWELL, *THE AFRICAN DIASPORA IN THE MEDITERRANEAN LANDS OF ISLAM* (2002); ALLAN FISHER & HUMPHREY FISHER, *SLAVERY AND MUSLIM SOCIETY IN AFRICA: THE INSTITUTION IN SAHARAN AND SUDANIC AFRICA AND THE TRANS-SAHARAN TRADE* (1970).

<sup>30</sup> Ghislaine Lydon, *Islamic Legal Culture and Slave Ownership Contests in Nineteenth-Century Sahara*, 3 INT'L J. AFR. HIST. STUD. 391 (2007).

<sup>31</sup> See Ghislaine Lydon, *Slavery, Exchange and Islamic Law in Nineteenth-Century Sahara*, 23 AFR. ECON. HIST. 115 (2005).

<sup>32</sup> See HUGH THOMAS, *THE SLAVE TRADE: THE STORY OF THE ATLANTIC SLAVE TRADE, 1440–1870*, 82–87 (1997).

<sup>33</sup> See for example, Ralph Austen, *The Trans-Saharan Slave Trade: A Tentative Census in THE UNCOMMON MARKET: ESSAYS IN THE ECONOMIC HISTORY OF THE ATLANTIC SLAVE TRADE* 23 (Henry Gemery & Jan Hogendorn, eds. 1979); Ralph Austen & Dennis Cordell, *Trade, Transportation, and Expanding Economic Networks: Saharan Caravan Commerce in the Era of European Expansion* in BLACK BUSINESS & ECONOMIC POWER (Alusine Jalloh & Toyin Falola, eds. 2002); E. Ann McDougall, *Salt, Saharans and the Trans-Saharan Slave Trade: Nineteenth Century Developments in THE HUMAN COMMODITY: PERSPECTIVES ON THE TRANS-SAHARAN SLAVE TRADE* (Elizabeth Savage, ed., 1992).

- <sup>34</sup> E.g. RICHARD L. ROBERTS, *WARRIORS, MERCHANTS AND SLAVES: THE STATE AND THE ECONOMY IN THE MIDDLE NIGER VALLEY, 1700-1914* (1987).
- <sup>35</sup> See her majestic *ON TRANS-SAHARAN TRAILS: ISLAMIC LAW, TRADE NETWORKS AND CROSS-CULTURAL EXCHANGE IN NINETEENTH-CENTURY WESTERN AFRICA* (2009).
- <sup>36</sup> See Saïdou Kane, *Histoire de l'Esclavage et des Luites Anti-esclavagistes en Mauritanie*, S.O.S. ESCLAVES MAURITANIE," <http://www.sosesclaves.org/Pagecentrale.htm> (last visited Mar. 8, 2011). For the "exporting schemes," see David Kyle and John Dale, *Smuggling the State Back In: Agents of Human Smuggling Reconsidered in GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES* 32–34 (David Kyle & Rey Koslowski eds., (2001)).
- <sup>37</sup> For more on this argument, see Joel Quirk, *The Anti-Slavery Project: Linking the Historical and Contemporary*, 28 *HUM. RTS. Q.* 565 (2006) (suggesting that the failure of contemporary anti-slavery literature is its failure consider the slavery from a macro-historical perspective).
- <sup>38</sup> See THOMAS, *supra* note 32, at 277. See generally David Geggus, *The French Slave Trade: An Overview*, 58 *WILLIAM & MARY Q.* 119 (2001).
- <sup>39</sup> See LAURENT DUBOIS, *A COLONY OF CITIZENS: REVOLUTION AND SLAVE EMANCIPATION IN THE FRENCH CARIBBEAN, 1787-1804* (2004); LAURENT DUBOIS, *LES ESCLAVES DE LA RÉPUBLIQUE: L'HISTOIRE OUBLIÉE DE LA PREMIÈRE ÉMANCIPATION* (Paris: Calmann-Lévy, 1998).
- <sup>40</sup> See THOMAS, *supra* note 32, at 742.
- <sup>41</sup> MARTIN KLEIN, *SLAVERY AND COLONIAL RULE IN FRENCH WEST AFRICA* (1998).
- <sup>42</sup> See Abdel Wedoud Ould Cheikh, *L'évolution de l'esclavage dans la société maure*, in *NOMADES ET COMMANDANTS: ADMINISTRATION ET SOCIÉTÉS NOMADES DANS L'ANCIENNE A.O.F.* 187 (Edmond Bernus eds., (1993)). The five villages of freedom were the administrative centers of Njaago (1856), Selibaby (1905), Boghe (1905), Kaédi (1906), Guray (1908). See *Document-Mauritana: A Future Free from Slavery*, AMNESTY INTERNATIONAL (Nov. 7, 2002), <http://www.amnesty.org/en/library/asset/AFR38/003/2002/en/5e17a203-d7f1-11dd-9df8-936c90684588/afr380032002en.html>.
- <sup>43</sup> See E. Ann McDougall, *Discourse and Distortion: Critical Reflections on Studying the Saharan Slave Trade*, 334 *REVUE FRANÇAISE D'HISTOIRE D'OUTRE-MER* 55 (2002).
- <sup>44</sup> See generally GEORGES DEHERME, *L'AFRIQUE OCCIDENTALE FRANÇAISE: ACTION POLITIQUE, ACTION ÉCONOMIQUE, ACTION SOCIALE* (1908).
- <sup>45</sup> See generally *id.*
- <sup>46</sup> See James L. A. Webb Jr., *The Horse and Slave Trade Between the Western Sahara and Senegambia*, 34 *J. AFR. HIST.* 221, 245 (1993).
- <sup>47</sup> Convention to Suppress the Slave Trade and Slavery, League of Nations 60 *LNTS* 253 (1926).
- <sup>48</sup> E. Ann McDougall, *A Topsy-Turvy World: Slaves and Freed Slaves in the Mauritanian Adrar, 1910–1950*, in *THE END OF SLAVERY IN AFRICA* 368 (Suzanne Miers & Richard L. Roberts eds., 1988).
- <sup>49</sup> JEAN SURET-CANALE, *FRENCH COLONIALISM IN TROPICAL AFRICA, 1900–1945* 66 (1971). For information about census use, see *THE DEMOGRAPHICS OF EMPIRE: THE COLONIAL ORDER AND THE CREATION OF KNOWLEDGE* (Karl Ittmann, et al. eds., 2010).
- <sup>50</sup> *Id.*

<sup>51</sup> The French feared a repeat of the Banamba slave exodus, and the collapse of the rural economy. See Richard L. Roberts & Martin A. Klein, *The Banamba Slave Exodus of 1905 and the Decline of Slavery in the Western Sudan*, 21 J. AFR. HIST. 375, 388 (1980).

<sup>52</sup> McDougall, *supra* note 35, at 363.

<sup>53</sup> *Id.* at 364.

<sup>54</sup> *Id.* at 367.

<sup>55</sup> Richard L. Roberts and Suzanne Miers, "The End of Slavery in Africa," in S. Miers and R.L. Roberts (Eds.), *The End of Slavery in Africa* (1988), pp. 20, 22.

<sup>56</sup> See McDougall, *supra* note 48, at 367.

<sup>57</sup> See JOHN MERCER, *SLAVERY IN MAURITANIA TODAY* (1982).

<sup>58</sup> URS PETER RUF, *ENDING SLAVERY: HIERARCHY, DEPENDENCY AND GENDER IN CENTRAL MAURITANIA* (1999).

<sup>59</sup> See generally *Report on the Abolition of Slavery in Mauritania*, FINDARTICLES.COM, [http://findarticles.com/p/articles/mi\\_m1309/is\\_v22/ai\\_3663305/](http://findarticles.com/p/articles/mi_m1309/is_v22/ai_3663305/) (referencing reports E/CN.4/1985/50 and E/CN.4/Sub.2/1984/23) (last visited Apr. 5, 2011).

<sup>60</sup> While there were some in Mauritania who insisted that slavery conformed with Islamic law (*shari'a*), this mission was targeted at enhancing the economic development opportunities in the country. Ann McDougall argues,

What was so important about this particular...[mission] was the government's obvious aim to counter images of itself as a racist, slave-based society in the eyes of the west. Whereas its move towards becoming a more Islamic state had been intended to open the aid coffers of Middle Eastern countries, the abolition legislation was aimed primarily at western (European and American) agencies. By publicly confirming the illegality of slavery, Mauritania allied with the democratic regimes of the west; by inviting in external observers, it hoped to underscore that legal abolition could only go so far and that actual 'freedom' for slaves depended upon economic development. The vestiges of slavery the mission would chronicle were not embarrassing for the government; on the contrary, they were leverage for much desired western aid and investment.

McDougall, *supra* note 17, at 970.

<sup>61</sup> See *Mauritania: A Future Free From Slavery*, AMNESTY INT'L 8 (Nov. 7, 2002), <http://www.amnesty.org/en/library/asset/AFR38/003/2002/en/6b9a7e3f-d7f1-11dd-9df8-936c90684588/afr380032002en.pdf>.

<sup>62</sup> United Nations Committee on the Rights of the Child, 724th Sess., CRC/C/SR.724 (Sept. 25, 2001).

<sup>63</sup> See Mohamed Yahya Ould Abdel Wedoud, *Slavery still weighs heavily on Mauritanian society despite ban*, MAGHAREBIA (Mar. 2, 2009), [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2009/02/03/feature-02](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/02/03/feature-02).

<sup>64</sup> US DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 168* (3d ed. 2003) [hereinafter 2003 *TRAFFICKING IN PERSONS REPORT*].

<sup>65</sup> See 2008 *TRAFFICKING IN PERSONS REPORT*, *supra* note 5, at 178.

<sup>66</sup> Human Rights Council, Race, Racial Discrimination, Xenophobia and Related Intolerance-Follow-up to and Implementation of the Durban Declaration and Programme of Action, ¶ 27, U.N. Doc. A/HRC/11/36/Add.2; GAOR 11th Sess. (Mar. 6, 2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/122/33/PDF/G0912233.pdf?OpenElement>.9.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*; Human Rights Council, Report of the Special Rapporteur on contemporary forms of slavery, including causes and consequences, ¶ 25 U.N. Doc. Also A/HRC/15/20/Add.2; GAOR 15th Sess. (Aug. 24, 2010), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.20.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.20.Add.2_en.pdf).

<sup>69</sup> *Id.* at ¶ 26.

<sup>70</sup> *Id.*

<sup>71</sup> *See id.*

<sup>72</sup> *Id.* at ¶ 90.

<sup>73</sup> A/HRC/15/20/Add.2 (16 August 2010), p.9.

<sup>74</sup> *Mauritania: Activists' Trial Puts Spotlight on Anti-slavery Law*, IRIN, Jan. 4, 2011, <http://newsite.irinnews.org/Report.aspx?ReportID=91528> (“Six anti-slavery activists are in prison in Mauritania in a case rights experts say points to the challenges of ensuring a 2007 law criminalizing slavery is more than just words on paper. The six men, members of the Mauritanian anti-slavery group Initiative pour la résurgence du mouvement abolitioniste (IRA), are set to go on trial in the capital, Nouakchott, on 5 January after two postponements. The authorities reportedly said the IRA members attacked security forces; the activists said they were simply demonstrating against slavery.”)

<sup>75</sup> *See id.*

<sup>76</sup> *Slavery Still Persists in Mauritania*, AFROL NEWS.

<sup>77</sup> 2010 TRAFFICKING IN PERSONS REPORT, *supra* note 21, at 229.

<sup>78</sup> *Id.* at 230.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 229–31.

<sup>81</sup> For example, discussion of child slavery is sometimes recast as a corruption of the cultural practice of child marriage. *See Mauritania: Child marriage tradition turns into trafficking*, IRIN (Dec. 9, 2008), [See http://www.irinnews.org/report.aspx?ReportID=81891](http://www.irinnews.org/report.aspx?ReportID=81891).

<sup>82</sup> Thomas, *supra* note 32, at 513–36.

<sup>83</sup> David Eltis & Stanley L. Engerman, *Was the Slave Trade Dominated by Men?*, 23 J. INTERDISCIPLINARY HIST. 237, 253 (1992).

<sup>84</sup> *Id.*

<sup>85</sup> Jelmer Vos, *Slave Trafficking and 'Immigrant Recruitment' in the Lower Congo, 1830–1900*, in TRAFFICKING IN WOMEN AND CHILDREN IN AFRICA: COLONIAL LEGACIES AND POSTCOLONIAL CHALLENGES (Benjamin N. Lawrance & Richard L. Roberts eds., forthcoming 2011).

Table 2. Proportion of children and male slaves in the Congo slave trade, 1791–1865

Period	Children (%)	Standard deviation	Male (%)	Standard deviation
1791–1810	16.9	16.6	65.5	6.8
1811–1830	24.1	17.5	65.4	15.1
1831–1850	51.1	15.8	80.4	10.8
1851–1865	39.3	21.5	76.4	14.0

<sup>86</sup> See generally JOSEPH C. DORSEY, *SLAVE TRAFFIC IN THE AGE OF ABOLITION: PUERTO RICO, WEST AFRICA, AND THE NON-HISPANIC CARIBBEAN, 1815–1859* (2003).

<sup>87</sup> Farida Shaikh, *Judicial Diplomacy: British Officials and Mixed Commission Courts, in SLAVERY, DIPLOMACY AND EMPIRE: BRITAIN AND THE SUPPRESSION OF THE SLAVE TRADE, 1807–1975* 51 (Keith Hamilton & Patrick Salmon eds., (2009) and for the standard account, see SUZANNE MIERS, *BRITAIN AND THE ENDING THE SLAVE TRADE* (1975).

<sup>88</sup> For the simplest abolition timeline, see *Abolition of slavery timeline*, WIKIPEDIA (Mar. 28, 2011, 4:43PM), [http://en.wikipedia.org/wiki/Abolition\\_of\\_slavery\\_timeline](http://en.wikipedia.org/wiki/Abolition_of_slavery_timeline).

See also SEYMOUR DRESCHER, *ABOLITION: A HISTORY OF SLAVERY AND ANTISLAVERY* (2009); 2 *ENCYCLOPEDIA OF ANTISLAVERY AND ABOLITION* (Peter Hinks & John McKivigan eds., 2006).

<sup>89</sup> An Act to Protect the Commerce of the United States and Punish the Crime of Piracy enacted in 1819, provided federal protections against piracy. See Pub. L. 15–77, 3 Stat. 510 (1819). The Act was further, amended in 1820 to declare the slave trade and robbing a ship to be piracy as well. See Pub. L. 16-13, 3 Stat. 600 (1820). Section Five provided that:

if any person or persons whatsoever shall, on the high seas, commit the crime of piracy, as defined by the law of nations, and such offender or offenders shall afterwards be brought into or found in the United States, every such offender or offenders shall, upon conviction thereof . . . be punished by death.

Pub. L. 15–77, § 5, 3 Stat. 510 (1819).

Section Six set the act to expire at “the end of the next session of Congress.” Pub. L. 15–77, § 6, 3 Stat. 510 (1819). The act was later amended by the 1820 Piracy Law to continue “to protect the commerce of the United States and punish the crime of piracy.” Pub. L. 16-13, 3 Stat. 600 (1820). The 1820 Piracy Law extended the original Act an additional two years. It also added three additional types of piracy: robbery of a ship, its crew, or its contents; to seize or “decoy” onto a ship “any negro or mulatto, not held to service or labour by the laws of either of the states or territories of the United States with intent to make such negro or mulatto a slave; and to attempt to confine, deliver, or sell a negro or mulatto. Pub. L. 16-13, §§ 3–5, 3 Stat. 600 (1820). The act was made “perpetual” in 1823. Pub. L. 17-8, 3 Stat. 721 (1823).

<sup>90</sup> See ERIC BURIN, *SLAVERY AND THE PECULIAR SOLUTION: A HISTORY OF THE AMERICAN COLONIZATION SOCIETY* 40–50 (2005).

<sup>91</sup> See Diane Cappiello, *Antislavery Evangelical Protestantism, in ENCYCLOPEDIA OF ANTISLAVERY AND ABOLITION* 46 (Peter Hinks & John McKivigan eds., 2006).

<sup>92</sup> See generally ENCYCLOPEDIA OF EMANCIPATION AND ABOLITION IN THE TRANSATLANTIC WORLD (Junius P. Rodriguez ed., 2007).

<sup>93</sup> See DADY RUSTOMJID R BANAJI, SLAVERY IN BRITISH INDIA 202–03 (1933).

<sup>94</sup> See GYAN PRAKASH, BONDED HISTORIES: GENEALOGIES OF LABOUR SERVITUDE IN COLONIAL INDIA 156 (1990).

<sup>95</sup> See Philip Burnham, *Raiders and Traders in Adamawa: Slavery as a Regional System*, in ASIAN AND AFRICAN SYSTEMS OF SLAVERY 43–72 (James L. Watson ed., 1980).

<sup>96</sup> See LAIRD W. BERGAD, THE COMPARATIVE HISTORIES OF SLAVERY IN BRAZIL, CUBA, AND THE UNITED STATES 97 (2007); For additional references addressing the abolition movement in Brazil, see THE ABOLITION OF SLAVERY AND THE AFTERMATH OF EMANCIPATION IN BRAZIL (Rebecca J. Scott, et al. eds. 1988).

<sup>97</sup> A. G. Hopkins, *The 'New International Economic Order' in the Nineteenth Century: Britain's First Development Plan in Africa*, in FROM SLAVE TRADE TO 'LEGITIMATE' COMMERCE: THE COMMERCIAL TRANSITION IN NINETEENTH-CENTURY WEST AFRICA 240–59 (Robin Law ed., 1995).

<sup>98</sup> See Brussels Anti-Slavery Conference, July 2, 1890, 27 Stat. 886; T.S. 383.

<sup>99</sup> See Suzanne Miers & Martin A. Klein, *Introduction to SLAVERY AND COLONIAL RULE IN AFRICA* 12 (Suzanne Miers & Martin A. Klein eds., (1999).)

<sup>100</sup> See, e.g., Margaret Strobel, *Slavery and Reproductive Labor in Mombasa*, in WOMEN AND SLAVERY IN AFRICA 111–29 (Claire C. Robertson & Martin A. Klein eds., (1997); Martin A. Klein, *Sex, Power and Family Life in the Harem*, in WOMEN AND SLAVERY: AFRICA, THE INDIAN OCEAN WORLD, AND THE MEDIEVAL NORTH ATLANTIC 63–82 (Gwyn Campbell, et al. eds., 2007); Katrin Bromber, *Mjakazi, Mpambe, Mjoli, Suria: Female Slaves in Swahili Sources*, in WOMEN AND SLAVERY 111–28 (Gwyn Campbell, et al. eds., 2007); Martin A. Klein, *The Emancipation of Slaves in the Indian Ocean World*, in ABOLITION AND ITS AFTERMATH IN THE INDIAN OCEAN AFRICA AND ASIA 198 (Gwyn Campbell, ed., 2005).

<sup>101</sup> Considerably more research needs to be undertaken concerning this question. See, e.g., Joseph Miller, *A Theme in Variations: A Historical Scheme of Slaving in the Atlantic and Indian Ocean Regions*, 24(2) SLAVERY & ABOLITION 169–85 (2004).

<sup>102</sup> Gwyn Campbell notes that it is estimated that over two million slaves were exported from East Africa between 1830 and 1873, when slave shipments from Zanzibar were banned. See Gwyn Campbell, *Introduction: Slavery and Other Forms of Unfree Labour in the Indian Ocean World*, in THE STRUCTURE OF SLAVERY ix (Gwyn Campbell ed., 2004). See also, Edward A. Alpers, *The African Diaspora in the Northwestern Indian Ocean: Reconsideration of an Old Problem*, *New Directions for Research*, 17(2) COMP. STUD. ASIA, AFR. & MIDDLE EAST 62 (1997).

<sup>103</sup> See generally Shouket Allie, *A Legal and Historical Excursus of Muslim Family Law in the Colonial Cape, South Africa, Eighteenth to Twentieth Century*, in MUSLIM FAMILY LAW IN SUB-SAHARAN AFRICA: COLONIAL LEGACIES AND POST-COLONIAL CHALLENGES 63–84 (Shamil Jeppie, et al. eds. 2010).

<sup>104</sup> For “mature” colonial rule, see Benjamin N. Lawrance, et al., *Introduction to INTERMEDIARIES, INTERPRETERS, AND CLERKS: AFRICAN EMPLOYEES IN THE MAKING OF COLONIAL AFRICA* 21 (Benjamin N. Lawrance, et al. eds., 2006). See also, Arjun Appadurai, *Is Homo Hierarchicus?*, 13 AM. ETHNOLOGIST 745 (1986).

<sup>105</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, League of Nations, Dec. 2, 1949, available at <http://www.uncjin.org/Standards/Compendium/pt1i.pdf>.

<sup>106</sup> See, e.g., J.P. Daughton, *Behind the Imperial Curtain: International Humanitarian Efforts and the Critique of French Colonialism in the Interwar Years*, 34 FRENCH HIST. STUD. (forthcoming 2011). On the debate over eighteenth and nineteenth humanitarianism, see Thomas L. Haskell, *Capitalism and the Origins of the Humanitarian Sensibility, Part 1*, in THE ANTISLAVERY DEBATE: CAPITALISM AND ABOLITIONISM AS A PROBLEM OF HISTORICAL INTERPRETATION 107–35 (Thomas Bender ed., 1992).

<sup>107</sup> The text of The General Act of the Brussels Anti-Slavery Conference specifically requires signing parties to monitor and report on a national basis. See Brussels Anti-Slavery Conference, July 2, 1890, 27 Stat. 886; T.S. 383.

<sup>108</sup> See *Report Presented by the Temp. Slavery Comm.*, League of Nations Doc. C.465.1925.VI (1925).

<sup>109</sup> See Nina Lassen, *Slavery and Slavery-Like Practices: United Nations Standards and Implementation*, 57 NORDIC J. INT'L L. 197, 198–99 (1988); Kathryn Zoglin, *United Nations Action Against Slavery: A Critical Evaluation*, 8 HUM. RTS. Q. 306, 308–10 (1986).

<sup>110</sup> See Frederick Cooper, *From Free Labor to Family Allowances: Labor and African Society in Colonial Discourse*, 16 AM. ETHNOLOGIST 745, 749–52 (1989).

<sup>111</sup> See Convention (ILO No. 29) Concerning Forced or Compulsory Labour art. 2, June 28, 1930, 39 U.N.T.S. 55 (1930), available at <http://www.ilo.org/ilolex/cgi/convdeconvde.pl?C029>.

<sup>112</sup> See SUZANNE MIERS, SLAVERY IN THE TWENTIETH CENTURY: THE EVOLUTION OF A GLOBAL PATTERN 48 (2003); Kevin Bales & Peter T. Robbins, "No One Shall be Held in Slavery or Servitudes": A Critical Analysis of International Slavery Agreements and Concepts of Slavery, 2 HUM. RTS. REV. 18, 22 (2001),

<sup>113</sup> See *Vos supra* note 85.

<sup>114</sup> See, e.g., International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431.

<sup>115</sup> See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, pmbi., Mar. 21, 1950, 96 U.N.T. 271 ("prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community").

<sup>116</sup> The term "unfreedom" has generally been used to describe the status of proletarians and similar labor forces whose capacity to change their condition (to paraphrase Marx), paralleled the experience of slaves. See, e.g., G. A. Cohen, *The Structure of Proletarian Unfreedom*, 12 PHIL. & PUB. AFF. 3, 5 (1983). Increasingly, the term unfreedom has entered scholarly descriptions of postabolition societies, in order to account for new forms of bondage emerging in the wake of abolition. For an early example, see R. Frucht, *From Slavery to Unfreedom in the Plantation Society of St. Kitts, W.I.*, 292 ANNALS N.Y. ACAD. SCI. 379 (1977). See also William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 CARDOZO L. REV. 1711 (1996).



<sup>117</sup> See Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266226 U.N.T. 40, available at <http://www.wvda.org.au/slavabol1.pdf>.

<sup>118</sup> See *id.* at art. 1.

<sup>119</sup> See *id.* at art. 13 sec. 2 (entering into force upon ratification or accession of the State).

<sup>120</sup> CRAWFORD YOUNG, *THE AFRICAN COLONIAL STATE IN COMPARATIVE PERSPECTIVE* 188–89 (1994); MIERS, *supra* note 112, at 327.

<sup>121</sup> But a key distinction emerges with respect to antislavery and anti-trafficking legislation, as opposed to other themes or topics. We have identified a sequence of trends over several centuries, of which, the contemporary is only the latest iteration. The unveiling of the multiple trends of anti-slavery and abolition legislation—vividly displayed in the previous vertical narrative of Mauritanian attempts to extinguish slavery—suggests that there is something particular about slavery’s capacity to withstand and evade repeated attempts at legislative remedy. Perhaps the apparent necessity for repeated broad, regional, and international attempts to eradicate slavery and trafficking is also worthy of consideration.

<sup>122</sup> See George GB. Tindall, *Mythology: A New Frontier in Southern History*, in *THE IDEA OF THE SOUTH: PURSUIT OF A CENTRAL THEME* 5–6 (Frank E. Vandiver ed., 1964). See also, HOWARD; H ZINN, *SNCC: THE NEW ABOLITIONISTS* (1965–1964); *THE ANTISLAVERY VANGUARD: NEW ESSAYS ON THE ABOLITIONISTS* (Martin Duberman ed., 1965); L. Perry, *Psychology and the Abolitionists: Reflections on Martin Duberman and the Neoabolitionism of the 1960s*, 2 *REV. AM. HIST.* 309 (1974).

<sup>123</sup> See L. Billington D, Review, *Tilden G. Edelstein, Strange Enthusiasm: A Life of Thomas Wentworth Higginson*, 5 *J. AM. STUD.* 207 (1971); AILEEN S. KRADITOR, *MEANS AND ENDS IN AMERICAN ABOLITIONISM: GARRISON AND HIS CRITICS ON STRATEGY AND TACTICS, 1834–1850* (1969); JAMES MCPHERSON, *THE ABOLITIONIST LEGACY: FROM RECONSTRUCTION TO THE NAACP* (1975); *ANTISLAVERY RECONSIDERED* (Michael Fellman and Lewis Perry eds., 1979); D. BLIGHT, *RACE AND REUNION: THE CIVIL WAR IN AMERICAN MEMORY* (2001); *PROPHETS OF PROTEST: RECONSIDERING THE HISTORY OF AMERICAN ABOLITIONISM* (Timothy McCarthy & John Stauffer eds., 2006).

<sup>124</sup> Just as Civil Rights advocates believed in the fundamental change effected by federal legislative and judicial action, today’s neo-abolitionists focus their advocacy on new anti-trafficking laws. And just as Frederick Douglass, W. E. B. du Bois, and others held the Southern slave states’ desire to preserve the institution of slavery to be the primary cause of the Civil War, and that the nation had a moral obligation to abolish slavery and realize equal rights for all, neo-abolitionism harnesses the moral outrage erupting after each new exposé of the continued presence of child slaves and child enslavement networks. The contemporary neo-abolitionists embrace macro trends and transnational analysis and employ a discourse of “crisis” to amplify the “urgency” of action. Most importantly, however, like the nineteenth-century abolitionists, today’s neo-abolitionists establish close and effective relationships with media outlets. They prioritize the control of the form and content of their message represents a striking departure from the broader child labor advocacy of the 1980s and 1990s. For further discussion, see Benjamin N. Lawrance, *Documenting Child Slavery with Personal Testimony: The Origins of Anti-*

*Trafficking NGOs and Contemporary Neo-Abolitionism*, in *TRAFFICKING IN WOMEN AND CHILDREN IN AFRICA*, *supra* note 77.

<sup>125</sup> The nations that have no new legislation pertaining to trafficking since 2001 or for which no data is available are Cape Verde, Eritrea, Somalia, Seychelles, Sao Tome e Principe, and Zimbabwe. See UN OFFICE ON DRUGS AND CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS* (2009), [http://www.unodc.org/documents/humantrafficking/global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/humantrafficking/global_Report_on_TIP.pdf).

<sup>126</sup> This data includes all references to draft bills, tabled bills and laws, and revisions of existing codes pertaining to trafficking or use in the enforcement of anti-trafficking initiatives. In some instances countries may have drafted, tabled, or passed multiple bills or laws and enacted multiple code revisions.

<sup>127</sup> See generally US DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (1st ed. 2001); 2002 *TRAFFICKING IN PERSONS REPORT*, *supra* note 2; 2003 *TRAFFICKING IN PERSONS REPORT*, *supra* note 56; 2004 *TRAFFICKING IN PERSONS REPORT*, *supra* note 5; 2005 *TRAFFICKING IN PERSONS REPORT*, *supra* note 5; 2006 *TRAFFICKING IN PERSONS REPORT*, *supra* note 5; 2007 *TRAFFICKING IN PERSONS REPORT*, *supra* note 5; 2008 *TRAFFICKING IN PERSONS REPORT*, *supra* note 5; 2009 *TRAFFICKING IN PERSONS REPORT*, *supra* note 3; 2010 *TRAFFICKING IN PERSONS REPORT*, *supra* note 21.

<sup>128</sup> See CODE PÉNAL [PENAL CODE] (Côte d'Ivoire), available at <http://www.protectionproject.org/wp-content/uploads/2010/09/IVORY-COAST-FRENCH1.pdf>.

<sup>129</sup> Employment Act of 2000, § 4(1)–(2) (Act. No. 6/2000) (Malawi).

<sup>130</sup> 2010 *TRAFFICKING IN PERSONS REPORT*, *supra* note 21 at 222 (“Malawi prohibits all forms of trafficking through various laws, including the Employment Act and Articles 135 through 147 and 257 through 269 of the Penal Code, though the country lacks specific anti-trafficking laws.”).

<sup>131</sup> The Labour Proclamation of Eritrea, (No. 118/2001), tit. I art. 3(17)(b) (Eritrea).

<sup>132</sup> See *id.* at tit. III art. 9(6) (“An employer who engages in forced labour shall be punishable under the Penal Code.”).

<sup>133</sup> 2010 *TRAFFICKING IN PERSONS REPORT*, *supra* note 21, at 142.

<sup>134</sup> 2002 *TRAFFICKING IN PERSONS REPORT*, *supra* note 2, at 74.

<sup>135</sup> République du Mali, Code pénal de la République du Mali (Art. 242 of 1973)

<sup>136</sup> *Id.* at art 244.

<sup>137</sup> 2010 *TRAFFICKING IN PERSONS REPORT*, *supra* note 21, at 227.

<sup>138</sup> *Id.* at 228 (“the Malian government decided to introduce a law criminalizing all forms of trafficking in 2010.”).

<sup>139</sup> Loi No. 38/2003 du 27 mai 2003 Portant Définition et repression du trafic d'enfant(s) [Law No. 28/2003 of May 27, 2003 On the Definition and Suppression of Child Trafficking] c. I, art. 2 (Burk. Faso), available at <http://www.protectionproject.org/wp-content/uploads/2010/09/BURKINA-FASO.pdf>.

<sup>140</sup> *Id.* at c. I, art. 3 (“Article 3: Est réputé trafic d'enfant(s) tout acte par lequel un enfant est recruté, transporté, transféré, hébergé ou accueilli, à l'intérieur ou à l'extérieur du territoire burkinabè par un ou plusieurs trafiquants au moyen de menaces et d'intimidation par la force ou d'autres formes de contraintes, de détournements, de fraudes ou supercheries, d'abus de pouvoir ou d'exploitation de la situation de vulnérabilité d'un enfant ou dans le cas d'offre ou de réception de rémunération en vue

d'obtenir le consentement d'une personne ayant pouvoir de contrôle sur lui à des fins d'exploitation économique, sexuelle, d'adoption illicite, d'union matrimoniale précoce ou forcée ou à toute autre fin préjudiciable à la santé, au développement physique, mental et au bien-être de l'enfant.”)

<sup>141</sup> See *id.* at c. II, art. 4.

<sup>142</sup> Trafficking in Persons (Prohibition) Law Enforcement and Administration Act Cap. (24) § 50 (Nigeria). The Act defines key terms:

“Trafficking” includes all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labour, or in slavery-like conditions;

“Trafficked persons” means a victim of trafficking in persons; “Trafficker” means a person or an entity that intends to commit, aids, abets or acquiesces to an act of trafficking in persons. *Id.*

<sup>143</sup> *Id.* at Art. 23.

<sup>144</sup> See 2010 TRAFFICKING IN PERSONS REPORT, *supra* note 21, at 254 (“Niger prohibits slavery through a 2003 amendment to Article 270 of its penal code and prohibits forced and compulsory labor through Article 4 of its labor code. Penal code Articles 292 and 293 prohibit procurement of a child for prostitution, and Article 181 prohibits encouraging child begging or profiting from child begging.”).

<sup>145</sup> See Prevention of Organised Crime Act, (Act No. 29/2004) ch. 1 (Namib.), available at [http://www.parliament.gov.na/acts\\_documents/228\\_act\\_29\\_of\\_2004.pdf](http://www.parliament.gov.na/acts_documents/228_act_29_of_2004.pdf) Republic.

<sup>146</sup> See *id.* (“trafficking in persons” means the recruitment, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation and includes any attempt, participation or organising of any of these actions. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs . . .”).

<sup>147</sup> Children’s Protection and Welfare Act 2004 §2 (Lesotho), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/afs/lesotho/les\\_ch\\_welfare\\_bill.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/afs/lesotho/les_ch_welfare_bill.htm).

<sup>148</sup> Loi N° 009/2004 relative à la prévention et à la lutte contre le trafic des enfants en République Gabonaise (*rapport n° 13/2004 - Sénat*) [Act No. 009/2004 on preventing and fighting against child trafficking in Gabon (*Report No. 13/2004 - Senate*)].

<sup>149</sup> See CODE PENAL [C. PEN.] art. 597 (Eth.), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf>.

<sup>150</sup> See 2006 TRAFFICKING IN PERSONS REPORT, *supra* note 5, at 47.

<sup>151</sup> Anti-Human Trafficking Act (Act No. 7/2005) § 2(2) (Sierra Leone) (“A person engages in the trafficking in persons if he undertakes the recruitment, transportation,

transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.)

<sup>152</sup> Act to Ban Trafficking in Persons within the Republic of Liberia of 2005 §100, available at [http://www.protectionproject.org/wp-content/uploads/2010/09/Liberia\\_Act-to-BanTIP\\_2005.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Liberia_Act-to-BanTIP_2005.pdf) (“‘Trafficking In Persons’ shall mean the recruitment, transportation, transfer, harboring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or of a position of vulnerability, or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”).

<sup>153</sup> See generally 2006 TRAFFICKING IN PERSONS REPORT, *supra* note 5; 2007 TRAFFICKING IN PERSONS REPORT, *supra* note 5; 2008 TRAFFICKING IN PERSONS REPORT, *supra* note 5; 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3; 2010 TRAFFICKING IN PERSONS REPORT, *supra* note 21.

<sup>154</sup> See Loi 210/AN/07/5ème du 2 octobre 2007 relative à la Lutte Contre le Trafic des Êtres Humains [Law 210/AN/-7/5 of Oct. 2, 2007 On Combating Trafficking in Human Beings] (Djib.), available at <http://www.presidence.dj/jo/2007/loi210an07.php>; Lei No. 6/2008 de 9 de Julho 2008 [Law No. 6/2008 of July 9, 2008] (Mozam.); The Counter-Trafficking in Persons Act (Act No. 52/2010) (Kenya)

<sup>155</sup> See generally 2010 TRAFFICKING IN PERSONS REPORT, *supra* note 21.

<sup>156</sup> See Loi No. 029-2008/AN du 15 mai 2000 du Portant Lutte Contre La Traite Des Personnes Et Les Pratiques Assimilees; [Law No. 029-2008/AN of May 15, 2000 On the Fight Against Trafficking in Persons and Related Practices] (Burk. Faso), available at <http://www.protectionproject.org/wp-content/uploads/2010/09/BURKINA-FASO.pdf>; Prevention and Combating of Trafficking in Persons Bill, (Bill No. 7/2010) (S. Afr.); The Combating of Trafficking in Persons Act (Act No. 2/2009) (Mauritius), available at [https://www.oit.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_126787.pdf](https://www.oit.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126787.pdf); Trafficking in Persons (Prohibition) Law Enforcement and Administration Act Cap. (24) § 50 (Nigeria). See also, 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 226 (Nigeria’s “2003 Trafficking in Persons Law Enforcement and Administration Act . . . was amended in 2005 to increase penalties for traffickers.”).

<sup>157</sup> See Human Trafficking (Amendment) Bill (GPC/A464/350/9/2007) (Ghana); DANISH IMMIGRATION SERV., PROTECTION OF VICTIMS OF TRAFFICKING IN GHANA 8 (2008), available at <http://www.nyidanmark.dk/NR/rdonlyres/EB5BAEDA-0D96-46C2-B2D2-E48BA8911B2C/0/Ghanaffrapport2008.pdf> (“The Attorney-General’s Department explained that during the passage of Act 694 the words ‘for the purpose of exploitation’ were mistakenly left out. The effect of this omission was that the definition of human trafficking was not in accord with the internationally agreed definition of human trafficking in the Palermo Protocol.”). See also Benjamin N. Lawrance, *From Child Labor “Problem” to Human Trafficking “Crisis”*: *Child Advocacy and Anti-Trafficking Legislation in Ghana*, 78 INT’L LAB. 63 (2010).

<sup>158</sup> For organ theft, see Prevention and Combating of Trafficking in Persons Bill, (Bill No. 7/2010) art. 3.1(a) (S. Afr.) and Human Trafficking (Amendment) Bill (GPC/A464/350/9/2007) art. 1.2 (Ghana).

<sup>159</sup> See 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 226

<sup>160</sup> *Id.* at 226–27.

<sup>161</sup> Human Trafficking Act of 2005 (GPC/A464/350/9/2007), art.); Article 1(1)(a)–(b) (Ghana), available at <http://www.mowacghana.net/download/Human%20Trafficking%20Act.pdf>.

<sup>162</sup> *Id.* at art. (2).

<sup>163</sup> See *id.* at art. 1(3).

<sup>164</sup> See *id.* at art. 2(1).

<sup>165</sup> See *id.* at art. 2(2).

<sup>166</sup> *Id.* at art. 3(1).

<sup>167</sup> *Id.* at art. 2.

<sup>168</sup> *Id.* at art. 2(3).

<sup>169</sup> *Id.* at art. 2(4).

<sup>170</sup> *Id.* at art. 4.

<sup>171</sup> *Id.* at art. 8 (“A person is liable to be tried and punished in Ghana for trafficking if the person does an act which if done within the jurisdiction of the courts in this country would have constituted the offence of trafficking.”).

<sup>172</sup> *Id.* at art. 7 (“Special Mitigating Factors”).

<sup>173</sup> *Id.* at art. 6(1)(a).

<sup>174</sup> *Id.* at art. 9(1)(a)–(d).

<sup>175</sup> See *id.* at art. 9(2)–(5).

<sup>176</sup> *Id.* at art. 6(2)(b)(i)–(iv) (defining “Organisation” in Article 42).

<sup>177</sup> *Id.* at art. 14–17.

<sup>178</sup> *Id.* at art. 17(2); art.18(4).

<sup>179</sup> See *id.* at art. 35; Human Trafficking (Amendment) Act of 2006 (Ghana).

<sup>180</sup> See Lei No. 6/2008 de 9 de Julho 2008 de Tráfico de pessoas Artigo 10 [Law No. 6/2008 of July 9, 2008 de Trafficking in Persons art. 10] (Mozam.) (“Todo aquele que recrutar, transportar, acolher, fornecer ou receber uma pessoa, por quaisquer meios, incluindo sob pretexto de emprego doméstico ou no estrangeiro ou formação ou aprendizagem, para fins de prostituição, trabalho forçado, escravatura, servidão involuntária ou servidão por dívida será punido...”). The definition of “trafficking in persons” appears in the glossary annex. See *id.* at Anexo [Annex].

<sup>181</sup> *Id.* at art. 16.

<sup>182</sup> *Id.* at art. 5(b).

<sup>183</sup> See Prevention and Combating of Trafficking in Persons Bill, (Bill No. 7/2010) (S. Afr.). The full title of the draft bill is:

To give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to prevent and combat the trafficking in persons

within or across the borders of the Republic; to provide for measures to protect and assist victims of trafficking in persons; to provide for the establishment of the Intersectoral Committee on Prevention and Combating of Trafficking in Persons; and to provide for matters connected therewith. *Id.*

<sup>184</sup> Ghana's law does not cite the Palermo Protocol. In contrast, South Africa's draft bill includes the full protocol in Schedule 2 and, under the Chapter 1 definitions. *Id.* at § 1(1), sched. 2 ("UN Protocol to Prevent, Suppress and Punish Trafficking in Persons' means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in 60 Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000, the English text of which is replicated in Schedule 2.").

<sup>185</sup> *Id.* at pmb1. ("MINDFUL of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000, and other international instruments which place obligations on the Republic of South Africa towards the combating and, ultimately, the eradication of trafficking in persons..."). Ghana's law contains no such preamble or reference to obligations.

<sup>186</sup> *Id.* at § 34(1).

<sup>187</sup> *Id.* at § 34(34).

<sup>188</sup> See 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 7.

<sup>189</sup> Compare see Prevention and Combating of Trafficking in Persons Bill, (Bill No. 7/2010) § 34 (S. Afr.) ("Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child") and Children's Act, (Act No. 38, 2005) cl. 287 (S. Afr.) ("[Clause] 287. If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may—(a) suspend all parental responsibilities and rights of that parent, guardian, or other person; and (b) place that child in temporary safe care, pending an inquiry by a children's court.") available at <http://www.education.gov.za/LinkClick.aspx?fileticket=XMF%2FuqNr52U%3D&tabid=271&mid=1140>.

<sup>190</sup> See Loi N° 009/2004 relative à la prévention et à la lutte contre le trafic des enfants en République Gabonaise (*rapport n° 13/2004 - Sénat*) [Act No. 009/2004 on preventing and fighting against child trafficking in Gabon (*Report No. 13/2004 - Senate*)] (Gabon); Relating to the Fight against Child Trafficking and Slavery (Law No. 015/2005) (Cameroon). See also 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 97–98, 137–38); A 2006 Cameroonian draft bill on human trafficking has not been signed into law. See 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 98.

<sup>191</sup> See, e.g., Loi No. 38/2003 du 27 mai 2003 Portant Définition et repression du trafic d'enfant(s) [Law No. 28/2003 of May 27, 2003 On the Definition and Suppression of Child Trafficking] c. I, art. 2 (Burk. Faso). This group also includes Southern Sudan, a region soon to become independent, and already passing its own legislation.

<sup>192</sup> Loi No.2005-009 Relative au Trafic D'enfants au Togo Chapitres I–V [Law No. 2005-09 Relating to Child Trafficking in Togo ch. I–V] (Togo), available at

<http://www.ilo.org/dyn/natlex/docs/SERIAL/72058/72983/F1981134441/trafic%20enfant.pdf>.

<sup>193</sup> The full law comprises three printed pages, in contrast with, for example, Zambia's fifty-four page human trafficking law.

<sup>194</sup> Loi No.2005-009 Relative au Trafic D'enfants au Togo Chapitre I Article premier [Law No. 2005-09 Relating to Child Trafficking in Togo ch. I art. 1] (Togo).

<sup>195</sup> *Id.* at ch. II art. 2.

<sup>196</sup> *Id.* at ch. II art. 3.

<sup>197</sup> *Id.* at ch. II art. 4.

<sup>198</sup> *Id.* at ch. II art. 5.

<sup>199</sup> *Id.* at ch. II art. 6.

<sup>200</sup> *See id.* at ch. III art. 7 ("L'Etat et les collectivités locales prennent toutes les mesures appropriées en vue d'assurer la protection de tous les enfants contre le trafic et toute forme d'exploitation.").

<sup>201</sup> *Id.* at ch. III art. 9

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at ch. III art. 10.

<sup>204</sup> *Id.* at ch. III art. 11.

<sup>205</sup> *See id.* at ch. III. art. 12.

<sup>206</sup> Loi No.2006-04 Du 10 AVRIL 2006, Chapter 1, Article 1. It builds on a 1961 law concerning the movement on minors outside the nation and a 1973 modification of the criminal code with respect to the slavery and the abduction of minors. Loi No.61-20 du 05 Juillet 1961 (République du Dahomey); Ordonnance No.73-37 du 13 Avril 1973. It builds on a 1961 law concerning the movement on minors outside the nation and a 1973 modification of the criminal code with respect to the slavery and the abduction of minors.

<sup>207</sup> *See* Loi No. 2006-04 Du 05 Avril 2006 de Portant conditions de déplacement des mineurs et repression de la traite d' enfants en republique de benin, Chapitre Premier Article 2 [Law No. 2006-04 of Apr. 5, 2006 on the Condition of Juvenile Movement and Repression of Child Trafficking in the Republic of Benin ch. I art. 2] (Benin).

<sup>208</sup> *Id.* at ch. I art. 2.

<sup>209</sup> *Id.* at ch. I art. 3.

<sup>210</sup> *Id.* at ch. I art. 4.

<sup>211</sup> *See id.* at ch. 1 art. 5–6.

<sup>212</sup> *Id.* at ch. I art. 7.

<sup>213</sup> *Id.* at ch. 1 art. 7.

<sup>214</sup> The mode of acquisition of such authorization is to be elaborated by decree by the Council of Ministers.

<sup>215</sup> The law is unclear as to who should be in possession of the documents—the child, the parent, the guardian, or all of the above. *See* Loi No. 2006-04 Du 05 Avril 2006 de Portant conditions de déplacement des mineurs et repression de la traite d' enfants en republique de benin, Chapitre II Article 9 [Law No. 2006-04 of Apr. 5, 2006 on the Condition of Juvenile Movement and Repression of Child Trafficking in the Republic of Benin ch. III art. 16] (Benin). Moreover, in the paramount interests of the child, any appropriate government or judicial authority may refuse entry to foreign children if the conditions of articles nine and ten are not met. *Id.* at ch. II art. 11.

- <sup>216</sup> *See id.* at ch. II art. 12.
- <sup>217</sup> *See id.* at ch. III art. 14.
- <sup>218</sup> *Id.* at ch. III art. 15, 18.
- <sup>219</sup> *Id.* at ch. III art. 16.
- <sup>220</sup> *Id.* at ch. III art. 17.
- <sup>221</sup> *See id.* at ch. III art. 18–19.
- <sup>222</sup> *See id.* at ch. III art. 20.
- <sup>223</sup> *Id.* at ch. III art. 21.
- <sup>224</sup> *See id.* at ch. III art. 21.
- <sup>225</sup> *Id.* at ch. III art. 21.
- <sup>226</sup> *See id.* at ch. III art. 25.
- <sup>227</sup> *Id.* at ch. III art. 22.
- <sup>228</sup> *Id.* at ch. III art. 23–24.
- <sup>229</sup> *Id.* at ch. III art. 26–27.
- <sup>230</sup> Children's Protection and Welfare Act 2004 (Lesotho), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/afs/lesotho/les\\_ch\\_welfare\\_bill.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/afs/lesotho/les_ch_welfare_bill.htm).
- <sup>231</sup> Kingdom of Lesotho, Children's Protection and Welfare Act 2004, Article 1.
- <sup>232</sup> *See id.* at art. 2 (“‘trafficking’ means the recruitment, transportation, transfer, sale, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.”).
- <sup>233</sup> *See id.* at art. 14 (“A child has a right to be protected from exploitative labour as provided for under section 233 of this Act and other international instruments on child labour.”).
- <sup>234</sup> *Id.* at pt. VIII.
- <sup>235</sup> Kingdom of Lesotho, Children's Protection and Welfare Act 2004, Article 70.
- <sup>236</sup> *Id.* at art. 71.
- <sup>237</sup> *Id.*
- <sup>238</sup> *See id.* at art. 74. Article 74 provides:
3. It shall be a defence under this section if a person takes or sends a child away without the consent of the person having lawful custody of the child if—
    - a. the person—
      - i. does it in the believe that the other person consented, or would have consented, if he/she was aware of all the relevant circumstances; or
      - ii. has taken all reasonable steps to communicate with the other person but has been unable to communicate with him/her;
    - b. the person has reasonable grounds to believe that the child has been abused, neglected, abandoned or exposed in a manner likely to cause a child physical, psychological or emotional injury; or
    - c. the other person has unreasonably refused to consent although he/she was aware of all the relevant circumstances.



<sup>239</sup> Côte d'Ivoire, Code Pénal, 31 août 1981: Article 378.

<sup>240</sup> *See id.* at art. 376 (“Est puni d’un emprisonnement de cinq à dix ans et d’une amende de 500.000 à 5.000.000 de francs, quiconque conclut une convention ayant pour objet d’aliéner, soit à titre gratuit, soit à titre onéreux, la liberté d’une tierce personne. Le maximum de la peine est toujours prononcé si la personne ayant fait l’objet de la convention est âgée de moins de quinze ans.”).

<sup>241</sup> *See id.* at art. 335–37.

<sup>242</sup> Côte d'Ivoire, Code de la fonction militaire, Art. 2.

<sup>243</sup> The Criminal Code of prohibits and punishes with imprisonment all forms of child trafficking (Art. 244), the sexual exploitation of children and forced prostitution of adult women (Art. 229) and the entering into agreements or contracts that deprive third parties of their liberty (Art. 242). *See* CODE PÉNAL [PENAL CODE] art. 244, 229, 242 (Côte d'Ivoire).

<sup>244</sup> *See* Agreement Concerning the Fight Against the Trafficking of Children between Borders, Cote D'Ivoire-Mali, Sept. 2000.

<sup>245</sup> 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 114.

<sup>246</sup> CODE PENAL [C. PEN.] art. 292–293, 270 (Niger); CODE DU TRAVAIL [LABOR C.], art. Art. 4 (Niger).

<sup>247</sup> 2009 TRAFFICKING IN PERSONS REPORT, *supra* note 3, at 51.

<sup>248</sup> For an appraisal of Ghana’s Child Rights Act, see Siobhan Laird, *The 1998 Children’s Act: Problems of Enforcement in Ghana*, 32 BRITISH J. SOC. WORK 893 (2002).

<sup>249</sup> *See* Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 AM. J. INT’L L. 789, 790–91 (2000).

<sup>250</sup> JONATHAN COHEN, BORDERLINE SLAVERY: CHILD TRAFFICKING IN TOGO 23 (Joanne Csete et al. eds., 2003).

<sup>251</sup> *See* Amy R. Ritualo et al., *Measuring Child Labor: Implications for Policy and Program Design* 24 COMP. LAB. L. & POL’Y J. 401 (2003).

<sup>252</sup> HUMAN RIGHTS WATCH (HRW), TOGO: BORDERLINE SLAVERY: CHILD TRAFFICKING IN TOGO 39–40 (2003).

<sup>253</sup> COHEN, *supra* note 250, at 40.

<sup>254</sup> *Id.*

<sup>255</sup> Convention on the Rights of the Child, art. 9, §1, Nov. 20, 1989, 1577 U.N.T.S. 3 (providing that “a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”); *see also id.* at art. 3, §1 (obliging states to make the best interests of the child a “primary consideration” in “all actions concerning children”).<sup>255</sup>

<sup>256</sup> COHEN, *supra* note 250, at 48.

<sup>257</sup> *Id.*